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MIRABEAU

AND

THE FRENCH CONSTITUTION

in the Years 1789 and 1790.

BY

FRED MORROW FLING,

PORTLAND, ME., U. S. A.

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TO THE MEMORY

OF

MY FATHER.

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Bacourt : Correspondance entre le comte de Mirabeau et le comte de la Marck, pendant les années 1789, 1790 et 1791. Recueillie, mise en ordre et publiée par M. Ad. De Bacourt. Paris 1851, 3 vols. Of leading importance for my work, was the introduction of 276 pages, consisting largely of the personal recollections of le comte de la Marck.

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INTRODUCTION.

In April 1789, France was awaiting with hope and anxiety the approaching assembly of the estates of the realm. In the same month, Gouverneur Morris, then a resident of Paris, reviewing in his diary the political situation, closed with these words: "It will depend much on the chapter of accidents who will govern the states general or whether they will be at all governable. Gods! what a theatre this is for a first rate character." Two years from that time, Mirabeau had finished his remarkable career: commenting upon his death, Morris wrote as follows: "I have seen this man in the short space of two years, hissed, honored, hated and mourned. Enthusiasm has just now presented him gigantic; time and reflection will shrink that stature." Although this prediction has not been realized—for viewed through the vista of a hundred years, Mirabeau still towers above his contemporaries, a giant among pigmies[1]—yet the writer saw clearly and expressed in sententious language, two most important facts, the greatness of the opportunity and the meteor-like career of the man who sought to avail himself of it.

Mirabeau had literally been trained for his great role. From early manhood, he had felt the heavy hand of the government under which he lived,[2] and the weary months of confinement in French dungeons implanted within him a bitter

[1]Diese Erweiterung unserer Kenntnis allein würde es rechtfertigen, bei der hundertjährigen Wiederkehr der grossen Erinnerungstage des dämonischen Mannes nicht zu vergessen den die deutsche Historiographie von Niebuhr und Dahlmann bis zu Häusser und Sybel mit seltener Übereinstimmung hoch über den Schwarm seiner Kampf genossen erheben hat." Stern, Das Leben Mirabeaus. (1889) Vorwort.

[2]At the time of his confinement upon the island of Rhé, he was twenty years old, and in the following ten years, he was five times imprisoned, at Manosque, If, Joux, Dijon and Vincennes.

hatred of despotism and a passionate love of constitutional liberty. These sentiments were the more extraordinary as the former was directed against institutions, not against persons,[1] while the latter, largely under the control of reason, did not degenerate into philosophical theories and dreams impossible of realization; the natural fairness of his mind and his practical training preserved him from such errors.[2]

Led, at an early age, to think deeply upon constitutional questions, the experiences of an eventful life furnished him with an abundance of material on which to exercise his mind and pen.[3] The governments of Holland, England and Prussia were examined in turn, and his great work, "De la Monarchie Prussienne sous Frederic le Grand" (1788) was the fruit of his constitutional studies.[4] About to undertake a similar work upon the English government, he was called to employ his great talents and extensive knowledge in framing a constitution for his own country. This opportunity he had long desired, and was firmly resolved that no fault of his own should deprive him of it.[5]

But on the very threshold of public life, he encountered the spectre that was to confront him at every turn during his brief career—the immorality of his youth. Rejected by the nobility of Provence,[6] he was elected as a representative of the

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[1] "Aucune animosité particuliere ne m' excite; mon ouvrage n'est point une satyre maligne, fruit de l'aigreur et du resentiment"—Des lettres de cachet et des prisons d'état, p. XI.

[2] "Et à dire vrai, je me méfie un politique de toute sureté qui n'est pas d'aréthmitique". To Mauvillon, Dec. 3, 1789.

[3] Between 1774 and 1789, Mirabeau published some twenty works, treating questions of politics, administration and finance.

[4] "Car je regarde la Monarchie Prussienne comme un imperissable monument, que nous devons soigner et perfectionner toute notre vie." To Mauvillon, 31 Jan. 1799.

[5] "Mon partie est irrévocablement pris de ne rien imprimer sur les questions qui nous divissent, et en général sur l'assemblée nationale, qui je ne sois sûr d'en être ou de n'en être pas; parceque je ne veux pas me donner une seule chance par ma faute pour en être exclus." To Mauvillon, Nov. 8, 1788.

[6] "Il m' a aussi répété plusieurs fois que si en Provence, l'ordre de la noblesse ne l'avait pas repoussé il se serait trouvé placé naturellement dans une tout autre direction." De la Marck I, 109.

third estate by both Aix[1] and Marseilles. At war with the nobility,[2] an enemy to privilege and arbitrary power, Mirabeau was not at this time, nor did he ever become a republican in the truest sense of the word.[3] He was then and he always remained a firm advocate of the monarchial form of government;[4] not of the form then existing in France, where the king's word was law, but of a monarchy based upon justice and civil liberty,[5] and he looked forward to the establishment of such a regime as to "the day when talent also shall be a power."

Thus reared in the hard school of experience, equipped with the vast amount of practical and theoretical knowledge demanded by his task,[6] with definite views upon the correct course to be pursued in the reform of the government,[7] and

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[1]Mirabeau chose to represent Aix : his reasons for doing so are given in full in his second letter to the electors of Marseilles, found in Mémoires de Mirabeau V, 419.

[2]"J'ai été, je suis, je serai jusqu' au tombeau, l'homme de la liberté publique, l'homme de la constitution ; malheur aux ordres privilégiés, si c' est là plutôt l'homme du peuple que celui des nobles ; car les privilèges finiront mais le peuple est èternel." Méjan I, 52.

[3]" A travers toutes les declarations democratiques de Mirabeau, l'observateur peut bien voir qu' au fond de sa pensée il était plus monarchique que les ministres même des roi." De la Marck I, 103. "Par son caractère et je puis même dire par ses principes, il était aristocrate : mais son humeur et son éloquence l'entrainaient dans le parti populaire." Ibid I, 109.

[4]" Mirabeau a toujours été un partisan sincère de la royauté. Il ne voulait pas seulement la maintenir, il la voulait forte et puissante pour qu'elle pût facilement supporter les orages de la liberté. Tel il a été à la fin de sa carrière, tel il s' est montré des les premiers jours." Raynald 145.

[5]In May 1789, in a conversation with Malouet, Mirabeau said : "Je ne suis point homme à me rendre lâchement au despotisme. Je veux une constitution libre, mais monarchique. Je ne veux point ébranler la monarchie." De la Marck I, 311.

[6]"Il n' ignorait rien de ce qui interessait ses contemporains et ce qu' il avait appris, il se l' assimilait assez vite pour paraître l'avoir su de naissance." Aulard, 71. "Disons j'abord que nul homme ne fut jamais mieux préparé que lui à la carrière oratoire. Ces conditions de savoir universel réclamées par les anciens, il les remplissait mieux que personne en 1789. Sa lecture était prodigieuse, grâce aux longues années qu'il avait passées en prison." Aulard, 70.

[7]In the spring of 1789, Mauvillon was at work upon a civil code that Mirabeau hoped to use as a basis for the legislative reforms.

capable of expressing these views in language at once perspicuous and attractive, Mirabeau appeared in the Assembly, conscious of his superiority and ambitious of playing the leading role. His reception was far from favorable, for at his entrance he was "hissed although not loudly."[1] Distrust due to the irregularities of his youth, met him upon all sides ;[2] he charmed his colleagues by his eloquence, he led them against their will, but he could not win their confidence.[3] In bitterness of spirit he repeatedly exclaimed, "Ah ! how the immorality of my youth injures the public cause !" Belonging to no party, he pursued his solitary way, advocated his own ideas and succeeded in impressing much of his personality upon the legislation from 1789–1790 ; what part he took in the constitutional debates of these two years, what views he advocated, it is the province of the following pages to discover.

III. DESTRUCTION OF THE OLD GOVERNMENT.

A. EXAMINATION OF CREDENTIALS.

During the autumn of 1788 and the following spring, France was a hotbed of political discussion.[4] Of the many questions treated in the pamphlets, that fell as thick as autumn

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[1]Diary and Letters of Gouverneur Morris I, 75.

[2]His relations with de la Marck, Malouet, Necker, Montmorin and the Queen, all testify to this distrust. Morris—who was not acquainted with Mirabeau—had the entrée of the first salons of Paris, and he was simply voicing the sentiment of aristocratic circles when, after Mirabeau's death, he characterized him as "beyond all controversy, one of the most unprincipled scoundrels, that ever lived." Morris I, 502.

[3]"On était en garde contre tout ce qu'il proposait. Son avis dans sa bouche avait de la défaveur ; cependant on admirait son talent." Bailly Memoires I, 303. Quoted by Häusser. "Bref, l'assemblée national doit se défies de l'influence dangereuse qu'il n'exerce que trop sur elle." Mirabeau dévoilé, p. 14.

[4]"La France entière s'agitait. Il n'y avait plus qui un sujet de conversation, les affiaires publiques ; on en parlait avec feu jusque dans les plus petites villes, jusque dans les villages." Droz. 136.

Young's "Travels in France" fully justify Droz's generalization, but Young brings out two very important points to which Droz does not refer, namely : the deep ignorance of the people as to the real state of affairs and the short-sightedness of the government in not supplying them with information.

leaves,[1] the two most important were those touching the double representation for the commons and the form of voting in the National Assembly. The increase of representation for the third estate and the vote by head instead of by order, were advocated by the most enlightened men of the nation; they looked upon these measures as the indespensible foundation of all reforms.[2] The innovations were naturally opposed by the nobility and clergy who saw in such concessions, the prelude to their own destruction. The first question was definitely settled by decree of council in December, 1788, and this double representation for the commons formed the basis of the spring elections; the second point was still undecided when the estates met in May.

The government had been strongly urged by clear headed men like Malouet and the bishops of Bordeaux and Langres to take the initiative in the matter, but declined to do so.[3] In the opening session of the 5th of May, the secretary of state, Barentin, referred to the matter very briefly and very vaguely, practically leaving it as a bone of contention to be fought over by the estates.[4] The contest began at once. The nobility

[1] "Quelqu'un en acheta 2500 dans les derniers mois de 1788; et sa collections était loin d'être complète." Droz II, 136.

"The business going forward at present in the pamphlet shops of Paris is incredible. I went to the Palais Royal to see what new things were published and to procure a catalogue of all. Every hour produces something new. Thirteen came out to-day, sixteen yesterday and ninety-two last week." Young, June 9, 1789.

[2] "Les hommes les plus éclairés, tels que Mounier, Malouet, Lally Tollendal, desiraient la double représentation et le vote par tête. Si le gouvernement vouloit supprimer les abus, s'il vouloit termines ses longs débats avec la magistrature, en donnant une constitution à la France, qui réellement n'en avait pas, les deux conditions réclamées etaient indispensables." Droz, II, 108.

[3] "Necker se retranchait dans ses principes; les états généraux doivent jouir d'une entiére liberté; le roi la gênerait en prenant l'initiative; les fonctions du ministre se bornent à conduire les représentans de la nation jusqu' à la porte du sanctuaire; son devoir est de se retirer ensuite pour les laisser délibérer." Droz II, 161.

[4] "Sa Majesté, Messieurs, n'a point changé la forme des anciennes déliberations; et quoi que celle par-têtes en ne produisant qu'un seul résultat, paroisse avoir l'avantage de faire mieux connoître le désir général, le roi a voulu que cette nouvelle forme ne puisse s' opérer que du consentement libre des états généraux, et avec l'approbation de Sa Majesté." Arch. parl. VIII, 3.

hastened to organize as a distinct body; the clergy debated and hesitated, while the commons remained inactive, not fully comprehending the situation. At once the question. "Shall the estates vote by order or by head?" yielded precedence to another, "Shall all credentials be examined in a common assembly?" To this question the commons replied most emphatically in the affirmative; the nobility, on the contrary, believing that to yield upon this point would be equivalent to a surrender upon the question of voting by head,[1] replied as emphatically in the negative. Discussions and conferences increased party feeling, but failed to solve the problem. On the 17th of June, the commons cut the gordian knot by declaring themselves "National Assembly," and the royal letter of the 27th of the same month, instructing the nobility and clergy to unite themselves to the commons, disposed of the question forever and with it of the question of voting by head.

The policy of masterly inactivity, pursued by the third estate up to the decisive 10th of June, was very largely the result of Mirabeau's energetic opposition to any measures based upon the recognition of the deputies as an organized body. In a letter to Mauvillon, written in May, he refers to it in the following words: "The commons have up to the present persisted in a system of immobility, that by the whole power of the force of inertia, should render them victorious over everything and everybody, if they take care not to deviate from it."

The idea did not, however, originate with him. On the 6th of May, Malouet proposed that a deputation be sent to the privileged orders to invite them to present themselves at once in the place of general assembly for the purpose of verifying their credentials.[2] It was Mounier who responded to him, "I think such a step would compromise the interests of the commons; that there is no danger at all in temporizing."[3] But

[1] "Mais leur arrière pensée est que de déférer sur cela au bon sens et aux principes, c'est préjuger la question de delibérer et d'opiner par tête, qu'ils ne veulent pas perdre sans avoir tout risqué pour la gagner." To Mauvillon "de la mi Mai on environ 1789."

[2] Arch. parl. VIII, 28.

[3] Arch. parl. VIII, 28.

it was Mirabeau who adopted this policy and who became its most energetic and consistent advocate. When, on the following day, Malouet renewed his motion, Mirabeau combatted it on the ground that, "The deputies of the commons can appoint no deputations so long as their powers are not verified ; it is necessary to profit by the advantages of a complete inactivity under such circumstances."[1]

Thus, until the 14th of May, the commons remained inactive. On that day, Rabaud de Saint-Etienne proposed that commissioners be appointed to confer with commissioners from the other two orders. This called forth a debate that lasted until the 18th ; on the last day Mirabeau spoke.[2] Emphasizing the position maintained by the commons up to that time, he exclaimed, "We have never ceased to agree that we are not constituted."[3] Standing upon this ground, he made the following proposition : "Send to the clergy, gentlemen, but do not send to the nobility, for the nobility commands and the clergy negotiates.[4] Authorize who you will to confer with the clergy, provided that your envoys may not propose the slightest compromise, since upon the fundamental point of verification of powers in the National Assembly, you may not yield."[5] These ideas, however, found little favor ; the majority supported the

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[1]Arch parl. VIII, 30.

[2]Arch. parl. VIII, 41.

[3]"Nous n'avons pas cessé de convenir que nous n'étions pas constitués, devons nous permettre des formules qui dient toutes les apparences d'un acte de jurisdiction? Avons nous eu tort de pretendre que la puissance doit précéder l'action? Si cela était vrai hier, cela ne l'est il plus aujourd'hui? * * * * Tout peut se defendre, M. M., excepté l'inconséquence." Arch. parl. VIII, 42.

[4]"La motion de M. Rabaud de Saint-Etienne dissimule entièrement la conduite arrogante de la noblesse ; elle donne en quelque sorte l'attitude de la clientelle supplicante aux communes * * * Cette motion enfin traite avec la même déférence ceux qui, se rendant juges dans leur propre cause n'ont pas même daigne condescendre à la discuter, et ceux qui plus habiles ou plus délicats couvrent du moins de quelque procéde leur marche irrégulière et chancellante." Arch. parl. VIII, 42.

[5]"Dans notre sein même on s'efforce de former un parti pour diviser les états généraux en trois chambres * * Toute déviation du principe, toute apparance de composition encouragera le parti, et entraînera ceux d'entre nous qu'on est parvenu à ebranler." Arch. parl. VIII, 43.

motion of Rabaud de Saint-Etienne and commissioners were appointed.

But the negotiations were fruitless and on the 27th of May, Mirabeau renewed his proposal to appeal to the clergy. "We fear that a longer perseverance in our immobility will compromise the national rights * * * The clergy persevere in the role of conciliator that they have chosen. Let us address ourselves to them, but in a manner that will not leave the slightest pretext for evasion. I propose * * a deputation to the clergy * * that shall adjure the ministers of the God of peace to range themselves on the side of reason, of justice and of truth and to unite themselves in the common hall."[1] This time Mirabeau's motion aroused the most general enthusiasm; it was adopted by acclamation and executed at once. Yet before the clergy had opportunity to respond to the exhortation, the royal authority intervened and ordered that the conferences be renewed.[2]

The situation was a critical one, and no man realized it more fully than Mirabeau; to yield unconditionally or to refuse absolutely were courses of equal peril; the first would end in a decree of council and retention of the old form of deliberation, the second bordered upon revolution. It was necessary to choose a middle course.[3] All this he set forth clearly in a speech delivered on the 29th of May[4] and immediately proposed that the conferences be renewed, but that previous to this step, an address be sent to the king respectfully presenting the views of the commons and declaring in unmistakable language

[1]Arch. parl. VIII, 50.

[2]In his speech of the 29th, referring to the royal letter, Mirabeau said: "Qu' est ce donc que tout ceci? un effort de courage, de patience et de bonté de la part du Roi, mais, en même temps, un piége dressé par la main de ceux qui lui ont rendu un compte inexact de la situation des esprits et des choses, un piége en tous sens, un piége ourdi de la main des Druids; Piége si l'on défére au désir du Roi, piége si l'on s'y refuse." Arch. parl. VIII, 58. Not given by Méjan.

[3]It was desirable to throw all responsibility for disagreement on the shoulders of the nobility: "Elle mit ainsi les mauvais procédés de son côté; et les communes n'eurrent autre chose à faire qu'à rejeter sur la noblesse tous les inconvéniens du refus." Rabaud, 122.

[4]Arch. parl. VIII. 58.

"that the verification of powers can be definitely made and decreed only in the National Assembly." Again, as on the 18th, he had emphasized the facts that the commons were not organized and that the commissioners could be neither "judges nor arbitrators." His idea of an address was accepted, but the substance of the one adopted was such that it largely deprived the measure of its force; his views in regard to the commissioners were rejected a second time.

The conferences were renewed, but to no purpose. On the 10th of June, Mirabeau mounted the rostrum to say his last word on the topic that had absorbed the attention of the commons for more than a month.[1] "The commons cannot, without exposing themselves to the greatest dangers, delay longer to take a decisive part, and I am informed that a member of the deputation of Paris has a motion to make of the greatest importance." It was Sieyes, who proposed that a final summons be sent to the privileged orders, exhorting them to present themselves in the general assembly hall for the purpose of verifying the powers in common. The motion was almost unanimously adopted. The clergy and nobility were summoned; the call of bailliages began the evening of the 12th of June, was followed by the examination of credentials, and on the evening of the 14th the work was finished.

B. NATIONAL ASSEMBLY.

"Under what name shall the Assembly be constituted?"[2] was the new question that now presented itself, and one of far reaching significance.[3] The die was not yet cast; there was

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[1] Arch. parl. VIII, 84.

[2] "This question was raised on June 15 in the arguments of Mounier and Malouet, who were both terrified by the boldness of the proposed measures; but the deputies after being excited by the eloquence of Barnave and Mirabeau, declared themselves by an immense majority, to be the National Assembly." Stephens, I, 61.

Did Mirabeau "excite" the commons to declare themselves the National Assembly? Exactly the opposite. If Stephens understood Mirabeau's position, he has failed to make it clear.

[3] The question of the National Assembly had been partially discussed in May. On the same day when Rabaud de Saint-Etienne made his motion to summon the privileged orders, Chapelier presented a project containing this

nothing of haste in the step already taken, but would the next be as deliberate? The answer of the commons to the above question was of the greatest importance, for a turning point in the history of the Assembly had been reached and this answer would determine whether the future development of affairs was to be slow and regular, or rapid and violent. Mirabeau saw this clearly; he felt that the revolution had gone far enough.[1] He recognized the necessity of organizing for the purpose of arriving at "an order of things regular and durable," yet this step should be taken only with extreme caution. The commons were the "representatives of the French people," not of the nation; for France was a nation of classes, of which the people constituted but one, although the most numerous. Organized under this title, the commons could expect the approval of the king and claim the right to legislate for the most num-

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sentence: "Qu'un député n'est plus, apris l'ouverture des états généraux, le députi d'un ordre on d'un province, mais qu'ils sont les représentants de la Nation." Arch. parl. VIII, 36.

In his speech of May 18, Mirabeau said, referring to this statement: "Si nous sommes persuadés, Messieurs, autant que nous devons l'être, qu'une démarche aussi profondément décisive que celle de nous déclarer assemblée nationale, et de prononcer défaut contre les autres ordres, ne sauroit jamais être trop mûrie, trop mesurée, trop imposante, et même qu'elle nécessite d'autres actes sans lesquels nous pourrions obtenir pour tout accès, une dissolution qui livreroit la France aux plus terribles désordres, nous devons infiniment redouter de nous trouver contraints en quelque sorte par notre declaration, même à faire avec précipitation ce qui ne peut jamais être soumis à trop de délibérations." Arch. parl. VIII, 42. He took the same position in June.

[1] "Wenn irgend einer hätte er (Mirabeau) die Kraft gehabt, anzutreiben und fortzureissen, aber auch er zauderte, hielt die Genossen von allen Schritten zurück, weil er von der Haltlosigkeit und der Unerfahrenheit der Meisten den Ruin des Staates befürchtete." Sybel I, 49.

"Il est certain que la nation n'est pas mûre. L'excessive impérétie, l'epouvantable desorde du gouvernement ont mis en serre-chaude la revolution; elle a dévancé notre aptitude et notre instruction. Je me conduis en consequence." To Mauvillon 16 June, 1789.

"Je ne suis point homme à me rendre lâchement au despotisme. Je veux point ébranler la monarchie; et si l'on ne se met de bonne heure en mesure, j'apercois dans notre Assemblée de si mauvaises têtes, tout d'inexpérience, d'exaltation, une résistance, une aigreur si inconsidérées dans les deux premiers ordres, que je crains autant que vous les plus horribles commotions." Mirabeau to Malouet. Quoted by de la Mark, I, 312.

erous class of the nation, while this much despised name of "people," would, through their adoption of it, be given the importance that belonged to it. Such was Mirabeau's plan; it always remained a plan.

The question of organization was broached by Sieyes on the 15th of June, with the proposal that the commons assume the title "assembly of the representatives known and verified of the French nation." This, he declared, "was the only title fitted to the actual state of affairs" and he supported it in a speech replete with the political philosophy for which he was already famous.[1] A lively discussion followed in which Mirabeau was Sieyes chief opponent.[2] "It is necessary to constitute ourselves," he cried, "we are all in accord upon that point, but how? under what form? under what denomination?" In a masterly manner, he passed in review the titles that might suggest themselves, and rejected them all as unfit for a body that represented but one class in a nation where three existed.[3] He considered it of the utmost importance that the king should approve their organization and this fact should ever be kept in view in choosing a title.[4] "Further, this title of 'representatives known and verified' is it very intelligible? Will it strike your constituents who know only the states general? Are the reticences that it is destined to cover fitting to your dignity? * * * Is it not evidently a first determination, which has consequences that ought to be de-

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[1] "De plus, puisqu'il n' appartient qu'aux représentants vérifiés de concourir à former le voeu national, et que tous les représentants vérifiés sont dans cette assemblée, il est encore indispensable de conclure qu'il lui appartient, et qu'il n'apportient qu'à elle, d'interpréter et de représenter la volonté générale de la nation." Arch. parl. VIII, 109.

[2] Arch. parl. VIII, 109.

[3] "De quel droit sortiriez-vous aujourd'hui des limites de votre titre? N'êtes-vous point appellés en Etats? Le législateur provisoire n'a-t-il pas supposé trois ordres, quoiqu'il les ait convoqués en une seule Assemblée." Arch. parl. VIII, 111.

[4] "Je demanderai toujours; aurez-vous la sanction du roi? Et pouvez-vous vous en passer? L'autorité du monarque peut-elle sommeiller une instant? Ne faut il pas qu'el concure à votre décret, ne fût-ce que pour en être lié? Arch. parl. VIII, 110.

veloped ; ought one to launch you into this career without showing you the end to which one proposes to conduct you? * * * The title of deputies known and verified of the French nation is fitting neither to your dignity nor to the continuity of your labors, since the union that you hope for and wish at all times to facilitate would force you to change it. Do not take a title that may affright. Seek one that cannot be contested with you, that more pleasing and not less imposing in its plentitude, fitted to all times, would be susceptible of all the developments that may be permitted you by events—such is, according to my mind, the following formula, 'Representatives of the French people.'[1] But," he continued, "it is not sufficient to constitute our Assembly, to give it a title, the only one fitting to it, as long as the other two orders do not unite themselves to us as states-general. It is necessary to establish our principles. It is necessary to show: that it is not to us but to the three orders that one should attribute the non-reunion of the three estates ; why and how we are about to enter into activity ; why and how we maintain that the two orders may not take a position apart from us ; that they can have no veto. It is necessary to announce our intentions and our views ; it is necessary to assure by a step—equally wise, legal and moderate—the solidity of our measures, to maintain the resources of the government as long as they shall be employed to serve the public good and to present to the creditors of the state the hope of that security which they desire and which the national honor demands that we offer them : but always making it dependent upon the success of that national regeneration which is the grand and first object of our convocation and our wishes." A series of resolutions with which he closed this speech, embodied these guarantees.

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[1] "Vous y trouverez ma motion qui n'était autre que celle ci : De nous déclarer Représentans du peuple Français : c'est à dire ce que nous sommes incontestablement, ce que personne ne peut nous empêcher d'être, et ce mot à tiroir, ce mot vraiment magique, qui se prêtoit à tout, qui n'allarmait personne, reduisoit à des termes bien simples le grand procès : Est-ce le peuple Français ou les cent mille individus, qui se prétendent une caste à part, qui donneront des loix à la France?" To Mauvillon 16 June, 1789.

These were the utterances of a cool, calculating statesman,[1] of a man who moved in the world of realities, who was conversant with the laws of historical development and who recognized the necessity of counting with the existing.[2] He demanded a "national regeneration," but he drew the line sharply between a revolution based upon philosopical theories and a reform that could be reckoned with mathematical exactness. But in the National Assembly philosopical ideas had won the ascendency and Mirabeau was already classed among the moderate men.[3] The title proposed by him was warmly combatted, the word "peuple" being the chief point of assault.[4] It said too little, if it designated the ignorant and poor, too much, if it was synonymous with the word nation. Many declared that the title applied only to the unenlightened of the third estate and was really a term of reproach.

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[1] "Mons de Mirabeau spoke without notes for near an hour, with a warmth, animation and eloquence that entitles him to the reputation of an undoubted orator. He opposed the words *known* and *verified*, in the proposition of Abbè Sieyes, with great force of reasoning." Young, June 15, 1789.

"La parole de Sieyès est calme, rigoureuse, inflexible comme sa pamphlet; celle de Mirabeau éclate en emotions contradictoires comme le cri d'une âme en lutte avec elle-même." Martin XVI, 655.

Martin was undoubtedly wrong here; the speech itself and the testimony of a hearer who was a competent judge, are both against him. See Stern II, 16.

[2] In conversation with de la Marck, Mirabeau said: "Ancun homme seul ne sera capable de ramener les Français au bon sens; le temps seul peut rétablir l'ordre dans les esprits; avec eux il ne faut jamais ni présumer, ni désespérer. Aujourd'hui les Français sont malades, très-malades; il faut les traiter avec précaution." De la Marck I, 209.

[3] "L'effervescence au reste est prodigieuse, et l'on est irrité de ce que je suis toujours aux partis modérés. Mais je suis si convaincu qu'il y a un difference enorme entre voyager sur la Mappemonde ou en réalité sur la terre * * que je mériterai encore longtemps cet honorable reproche." To Mauvillon 16 June, 1789.

[4] "Imaginez vous que toutes les circumstances militaient contre une dénomination exclusive ou usurpartrice, et que dans ma motion toute entiére (laquelle est un ovrrage) on n'avoit trouvé à reprendre, que le titre de peuple." To Mauvillon 16 June, 1789.

In the evening of the same day (15th June) Mirabeau spoke again[1] in support of this title responding to the objections that had been made to it. "Yes," he exclaimed in closing, "it is because the name 'people' is not sufficiently respected in France * * * that we ought to impose it upon ourselves not only to elevate it, but to render it from this time on respectable to ministers and dear to all." Again on the 16th of June,[2] he made himself heard in the defence of this much debated word, expressing the passionate longing of his heart in the utterance, "Ah! if the choice of this name renders to an oppressed people firmness and courage, my soul is elevated in contemplating the happy consequences that this name may have in the future." But the last part of his discourse was lost in the tumult of disapproval that his utterances had called forth and he was unable to proceed.

On this day Sieyes spoke again. The title proposed by himself had found little favor. Abandoning that, he adopted one presented on the previous day by M. le Grand, "National Assembly." It had one great merit; it was short. The balloting took place on the 17th of June and Sieyes' title was adopted by a large majority.[3] Mirabeau was absent: he had no part in formulating the address decreed by the Assembly—and that was practically a literal reproduction of Sieyes' speech of the 15th —yet the decree defining the position of the Assembly on the

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[1]Arch. parl. VIII, 118. According to the Archives, Mirabeau spoke twice on the 15th and once on the 16th, according to Méjan, once on the first day and once on the last. But the second speech given by Méjan is made up of the second and third given by the Archives. Mirabeau wrote to Mauvillon (16 June). "J'ai parlé trois fois."

[2]Arch. parl. VIII, 123.

[3]Mirabeau always looked upon this step of the Assembly as a great misfortune. Writing to Mauvillon in June 1789, he said: "Ce grand ouvrage est fait et nous nous sommes constitués Assemblée nationale, sur le refus réitéré des deux ordres de se réunir à nous et de vérifiér leur pourvoir en commun. Ce n' était pas mon avis." And three months before his death, Mirabeau said to Dumont: "Ah! mon ami, que nous avions raison quand nous avons voulu, dès le commencement, empêcher les communes de se déclarer Asssemblée nationale! C'est là l'origine du mal. Ils ont voulu gouverner le roi, au lieu de gouverner par lui." Dumont, 267: Taine. "La Révolution I, p. 182.

national debt and on taxation, embodied all the resolutions proposed by Mirabeau on the 16th of June.[1]

Mirabeau did not long remain silent; his famous reply to the Marquis de Breze in the royal session of the 23d of June sent his name ringing through the length and breadth of France, and his proposal, made on the same day, that the deputies declare their persons inviolable, was adopted by an overwhelming majority. On the 27th of June, the members of the nobility that still held themselves aloof, appeared in the Assembly. The commons had won a decisive victory. Great was the rejoicing among the sanguine. "The revolution is ended! This revolution is the work of philosophy, it will not have cost a single drop of blood." They deceived themselves; the revolution had just begun.[2]

C. FOURTH OF AUGUST DECREES.

The three orders were united on the 27th of June, and on the 7th of July, the appointment of a committee marked the beginning of the work on constitutional reforms. It was to be no light task. The monarchy, rotten to the foundation, was helpless before the rising flood of the revolution: the Assembly, rapidly usurping all power, but utterly incapable of wielding it, soon found itself staggering under a burden of business—executive, legislative and judicial—that threatened to crush it. To follow a definite plan under such circumstances would have been difficult, had such a plan always existed, but the men who might have guided the Assembly in the ways of moderate and reasonable reform, were soon obliged to give place to more

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[1]Droz attributes the ideas to Sieyès: "Cet arrête est presque textuellement dans une brochure qu'il avait publiée avant l'ouverture des états (Vues sur les moyens d'exécution dont les representans du peuple pourront disposer). II, 215. * * * This is quite possible, but the decree is also textually almost the the same in Mirabeau's proposals of the 15th of June. Lucas Montigny says: "Mais en écarton la denomination conseillée par Mirabeau l'assemblée avait accueillir ses autres propositions reproduites par Target et Chapelier." VIII, 76.

[2]Young, commenting upon the action of the commons wrote: "It is a violent step which may be taken hold of by the court and converted very much to the people's disadvantage. The reason of Mons. Mirabeau against it was forcible and just." June 18, 1789.

fiery and revolutionary spirits. In such a state of affairs, it was to be expected that the course of events would depend much upon chance and little upon calculation.[1] And so it happened, that before the debates upon the reforms proposed by the committee had begun, the march of events forced upon the consideration of the Assembly three important constitutional questions: colonial representation, the majority necessary for the passage of a law, and the 4th of August decrees. Compared with the last, the first two sink into insignificance, but they are of interest from the fact that each aids, if only a little, in filling out Mirabeau's "confession of faith."

The rich colony of Saint Domingo had sent twenty delegates to the National Assembly. This number was out of all proportion to the white population of the island, but the colonists demanded that in fixing their representation, the wealth of the colony and the whole number of inhabitants—including slaves and free blacks—be taken into consideration. The matter came up for discussion on the 3d of July and the wish of the colonists found numerous advocates; Mirabeau was its principal opponent. He affirmed that it would have been more proper to consider first the question: "Shall delegates from the colonies be admitted?" but as the delegates were already admitted, it were better to pass this question over in silence and consider only the number of representatives to which the colonists were entitled. "The colonists pretend that the number of their representatives should be in proportion to the inhabitants of the island, the wealth that they produce, and their commercial relations: but * * do the colonies pretend to rank their negroes and colored people in the class of men or in that of beasts of burden? The colored people are free, proprietors,

[1] "En etudiant la revolution de 1789, il ne faut jamais perdue de vue que l'assemblée nationale réunissait toutes les capacités, tous les talents, toute l'energie, tout l'esprit, pour ainsi dire, du royaume, tandis qu'on ne rencontrait guère que de l'incapacité, de l'imprévoyance, de la faiblesse et certainement de l'insuffisance pour les circonstances dans les hommes qui compossaient le ministère. Celui-ci laissa maladroitement échapper de ses débiles mains les rênes du gouvernement; l'assemblée s'en saisit. Dès ce moment, tout tomber dans la confusion et la révolution marcha au hasard des passions et des intrigues." Dale Marck I, 110.

and taxpayers, and yet they cannot be electors. If the colonists wish the negroes and colored people to be men, let them franchise the first,[1] that all may be electors, that all may be elected. In the contrary case, we pray them to observe, that in proportioning the number of deputies to the population of France, we have not taken into consideration the quantity of our horses nor of our mules; that thus the pretension of the colonists to have twenty representatives is absolutely absurd."[2]

Here was the question in all its nakedness and here too was the solution of it. A vastly important one it was, although not so important for France as for the new born nation across the water, where it was destined to become a hundred headed monster. M. de Sillery, who followed Mirabeau, drew an ingenious picture of the wealth of Saint Domingo and urged the Assembly to admit the twenty deputies. Mirabeau replied: "The question here is not of the riches of Saint Domingo; it is to know if it is necessary to follow for Saint Domingo, another ratio of representation than that followed in all parts of France. * * * The number of deputies ought to be in proportion to the voters. This law has been general for us and I conclude that it ought to be the same for the colonies."[3] This was also the opinion of the Assembly and the number of deputies was reduced to six.

The discussion upon the majority necessary for the passage of a law, took place upon the 29th of July; it called forth two speeches from Mirabeau and a letter in the Courrier de Provence. It had been proposed by Rabaud de Saint-Etienne[4] that two

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[1]In August, while the discussion upon the rights of man was in progress, Mirabeau, writing in the Courrier de Provence, referred to these words: "Quand nous addressions ces paroles aux planteurs, nous ne pensions pas que le moment fût si proche où la grande cause de la liberté des negres enveloppée dans celle de la liberté générale de l'espèce humaine, seroit solennellement établie, avouée, sanctionnée par l'assemblée nationale." Courrier de Provence XXX, 1–2. 20–21 août.

[2]Arch parl. VIII, 186.

[3]Arch. parl. VIII, 187.

[4]On the 17th of July.

hundred members should constitute a quorum and that a simple plurality be sufficient for the passage of a law. In supporting this project, Mirabeau emphasized the necessity of "admitting the first elements of order as soon as possible." The regulation might not be perfect, but it would serve the Assembly until experience enabled it to supply something better. Passing on to the consideration of the project, he said: "We are here twelve hundred; in the system of the plurality, six hundred and one suffice to produce the adoption of a resolution against the wish of five hundred and ninety-nine that it be not adopted, or what comes to the same thing, who prefer to the state of things that one proposes, the state of things where we are, so much, that the law proposed had not passed.

"Follow the advice of those who attack the system of the plurality, substitute for it a law that demands more than three-fourths of the suffrages to form a resolution. What will happen? Three hundred would have more power to maintain their opinion than nine hundred to destroy it; that, in as much as a proposition would not have for it nine hundred and one votes, it would be without force, or what comes to the same thing, that the wish of nine hundred who think one way, will be submitted to the wish of three hundred who think another. In this system, gentlemen, what becomes of justice? What becomes of the common wish? How then could one say that the law is the expression of the general will?"[1] But the project still found opponents, notwithstanding Mirabeau's lucid reasoning. The Bishop of Chartres spoke in favor of a distinction between the destruction of an old law and the establishment of a new one, between changes in a law, important and grave, and a simple law of order having no necessary connection with the ensemble of the constitution and its laws; in the first case, he thought a simple plurality sufficient; in the other, he demanded at least a two-thirds vote.[2] In his reply,[3] Mirabeau uttered one

[1] Arch. parl. VIII, 297.

[2] Arch. parl. VIII, 298.

[3] Arch. parl. VIII, 298.

of those grand truths that were so characteristic of his speeches : "Great authorities have accredited the error of graduated pluralities toward which he seems to me to incline, but each day we learn better, that truth is the daughter of time and not of authorities." He then pointed out the impracticability of the system proposed, finally urging that the original project be adopted. After a somewhat lengthy discussion, this was done. In the Courrier de Provence, he looked at the question from an entirely different point of view : "The National Assembly is composed of heterogeneous parts, some of which have had much difficulty in amalgamating themselves to the whole and among which it would be easy to unite a majority sufficient to arrest everything ! The veto of the orders has been much investigated ! Ah ! is it not clear that the graduated plurality is exactly the same thing in a more pleasing form ? And that in this case, as in the other, it would be always a third or a fourth of the Assembly that would give laws to the nation ?"[1] The truth of this assertion is self-evident ; had a law been passed requiring a three-fourths vote for the passage of a resolution, the control of the Assembly would have been in the hands of the nobility.

Mirabeau was not present on the 4th of August,[2] when the Assembly, seized by a momentary madness, dismantled the old feûdal structure, sweeping away in one night institutions and privileges that had been the growth of centuries. In private, he was outspoken in his condemnation of this "orgie ;"[3] in

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[1]Courrier de Provence XXI, 21, (19-31 Juillet).

[2]"Il s'était rendu à une reunion de famille convoquée par suite de la mort du marquis de Mirabeau." Lucas-Montigny. "Mais pourquoi Mirabeau s'abstint il ? parce qu'il connaissait le dessein des moteurs de la séance du 4 août ; parce qu'il considerait leur project comme impolitique et périlleur." Ibid VI, 168.

"Informé d'avance de ce qui devait se faire dans cette séance, Mirabeau s'abstint d' y assister." De la Marck I, 100.

[3]"Il desapprouva aussi trés-hautement tout ce qui se fit dans la fameuse séance de nuit du 4 août 1789, qu'il nomma une orgie." De la Marck I, 100.

public, both in the Assembly[1] and in the Courrier de Provence, he expressed himself more reservedly, taking advantage, however, of every opportunity to modify the evil effects that might follow from this night of wild excitement.

The decrees passed in the tumult of that August night, were afterwards more calmly discussed, revised and reduced to definite form; the sessions of the 7th, 8th, 10th and 11th of August, were devoted to this work. Upon the "right of chase," and "tithes;" there were long and earnest debates; the former was discussed on the 7th of August. The article under consideration read: "Every proprietor has the right to destroy or to have destroyed upon his own estate, every kind of game." Clermont Tonnerre proposed that an exception be made in favor of the king. To this Mirabeau responded: "It has just been declared that the right of chase is inherent in property and cannot be separated from it. I do not comprehend how anyone can propose to the Assembly that the king, this guardian, this protector of all property, shall be the object of an exception in a law that consecrates all property. Let the king, like every other proprietor, hunt in his own domains; they are without doubt extended enough. Every man has the right to hunt in his own field, no man has the right to hunt in the field of another: this principle is sacred for the monarch as well as for every other." The abolition of all capitaineries "even royal," was decreed with the saving clause that, "the conservation of the pleasures of the king shall be provided for by measures compatible with the respect due to property and liberty."[2]

The abolition of tithes, church, feudal, and laical, was discussed on the 10th of August. In the latter two, Mirabeau recognized a proprietary right, that must be purchased; he

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[1]In a speech delivered the 19th of August, he said: "Il n'en est pas moins vrai que si ces arrêtés eussent paru plus lentement, si les discussions qui les ont suivis les eussent précédés, il n'en seroit résulté aucune inquiétude sur les propriétes." Arch. parl. VIII, 460.

[2]Arch. parl. VIII, 359.

denied that right to the tithes of the church.[1] "No gentlemen," he said, "the tithe is not a proprietary right: a proprietary right extends itself alone to that one who may alienate the property; and the clergy could never do that. History offers us a thousand cases of the suspension of tithes, of the application of tithes for the benefit of seniors, or for other purposes, and of restitution afterwards to the church; thus the tithes have never been anything more than annual enjoyments of simple possessions revocable at the will of the sovereign. The motion abolishes the ecclesiastical tithes, because they are a burdensome means of paying for a part of the public service for which they are destined and because it is easy to replace them in a manner less expensive and more equal."[2] The Assembly declared that "Tithes of every kind and rents that take the place of them * * * shall be abolished."

The debates were ended and the decrees were presented to the king.[3] What action would he take? Many of the nobility believed that he would exercise his newly acquired veto upon them. On the 14th of September, in the midst of the debate upon the duration of the royal veto, Barnave proposed that the deliberations upon this subject be suspended until the Assembly had decided whether the king have the right to veto the 4th of August decrees.[4] Mirabeau took the ground that they could not be vetoed; he could not consistently have taken any other ground. He was simply applying the principles laid

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[1] "Quand aux dîmes inféodées et laïques, le préopinant a tout dit. Il a bien exposé le principe, que la propriété n'appartient réellement qu' à celui qui peut transmettre, et qu'on troubleroit tout en remontant au travers du commerce des terrains pour jeter des doutes sur le titre primitif." Arch. parl. VIII, 386.

"Les dimes inféodées à l'usage de l'Eglise sont à la Nation. Celles qui appartiennent aux laïcs sont le bien des individus. La Nation peut abandonner ses propriétés, mais non disposer de celles des autres sans leur consentement." Courrier de Provence XXVII, 22.

[2] Arch. parl. VIII, 385.

[3] "Une telle importance s'attachait au décret sur les reformes du 4 août, à cette charte d'abolition de la féodalité, que l'assemblée entière se rendit près du roi pour la lui présenter." (13 août). Droz. II, 420.

[4] Arch. parl. VIII, 636.

down by himself on 1st of September,[1] when on the 14th of the same month he declared: "It was necessary to clear away without doubt, in order to raise the edifice of the constitution and of liberty. These decrees are not laws, but constitutional principles and bases. When then you sent the acts of the 4th of August for sanction, it was their promulgation alone that you desired."[2]

A long and heated discussion followed. It was affirmed by the opponents of the theory advocated by Mirabeau, that the decrees were true legislative articles and therefore needed the king's sanction. "The articles," answered Mirabeau, "may be divided into two classes: some are constitutional, others are small individual sacrifices of private munificence. In the hearts and heads of all the members of this Assembly, there is a general principle, and one that decides the question; it is that the general will makes the law. It has manifested itself by the decrees, the addresses, the acts of adhesion from the provinces and by the public joy. I demand if the general will could be more solemnly manifested."[3] He then called for the reading of Barnave's motion declaring his determination to support it. The motion was at once read and adopted. On the 18th of September an answer was received from the king; "in place of the simple monosyllable that had been demanded of him, he responded with a memoir." After the reading of this paper, M. Goupil moved that a committee of sixty be appointed to examine it and make a report. M. Chapellier opposed this proposition and demanded that the Assembly fix at once the terms of the sanction required of the king. Mirabeau supported Chapellier's proposition.[4] "To return to the articles of the 4th is an

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[1] "Je pense que le droit de suspendre, et même d'arrêter l'action du corps législatif, doit appartenir au roi quand la constitution sera faite, et qu'il s'agira seulement de la maintenir. Mais ce droit d'arrêter, ce veto ne sauroit s'exercer quand il s'agit de créer la constitution; je ne conçois pas comment on pourroit disputer à un peuple le droit de se donner à lui même la constitution par laquelle il lui plaît d'être gouverné desormais." Arch. parl. VIII, 538.

[2] Arch. parl. VIII, 637.

[3] Arch. parl. VIII, 639.

[4] Arch. parl. IX, 32.

act equally irregular, impolitic and impossible. To inquire if it had been possible—as it undoubtedly had been—to dispense with presenting them for sanction, would be superfluous, since they have been already presented. Let us seek then the part that we ought to take. * * * We have thought for the most part, that the examination of the constitutional power in its relations to the prince, was at bottom superfluous and dangerous in the circumstances. But this examination is superfluous only so long as we recognize, tacitly at least, the unlimited rights of the constitutional power. If these are contested, the discussion of them becomes necessary and the danger would lie principally in indecision." Then, in a masterly manner, he sketched the situation in France, pointed to the danger of a general conflagration and urged harmony and moderation. "Let us talk clearly—let us dare to say mutually, 'I desire to go so far—I will go no farther.'" Turning to the consideration of the decrees, he went on: "The sudden execution of the decrees of the 4th of August—passed with a precipitation rendered necessary by the emulation that moved the Assembly—would have produced, without doubt, great inconveniences. The Assembly felt this and obviated the difficulties by attaching restrictions to the decrees." For this reason, the king could not attribute his failure to promulgate them to the impossibility of execution. Promulgation was the only course that could be followed. The people enjoy these decrees already in anticipation, and were they contested to-day, the discontent, almost universal, would be increased.[1] * * "We are all interested in this, that the sanction pure and simple of the decrees, moderated by our reservations, re-establish harmony and concord * * I demand that our president receive the order to betake himself anew to the king, to declare to him that we await in session the promulgation of our decrees." This was done

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[1] "Des députés disaient avec raison que les arrêtés du 4 août avoient été répandus dans tout le royaume; que les peuples ne souffriroient pas qu'on se jouât des espérances qu'on leur avoit données, et qu'en suspendre l'exécution, c'étoit ramener le trouble et l'anarchie." Courrier Provence, XLI, 24, (11 au 14 September).

with the saving clause that the Assembly would take into the most careful consideration, his (the king's) observations upon many articles when it occupied itself with the settlement of the laws in detail. On the 21st of September, a letter from the king announced that the decrees had been made public.

Many writers[1] have seen but little "method in the madness" of the man who appeared now in the front rank of the defenders of the monarchy, now leading the assaulting column against it; now condemned the 4th of August decrees, now demanded there promulgation. Yet these acts are not so inconsistent as they appear on the surface. In transforming the old absolute monarchy, of which Mirabeau was the most bitter opponent, into the constitutional monarchy, of which he was the most energetic advocate, it was necessary to distinguish clearly between the rights of the monarch and the rights of the people;[2] to the superficial observer, the man who advocated now one, now the other, was simply devoid of principle, inconsistent and waiting for an opportunity to sell his services to the highest bidder.[3] That Mirabeau condemned the acts of that famous

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[1] "Mirabeau guidé par l'ambition d'être à la fois l'homme monarchique et l'homme populaire, passait souvent d'un camps dans un autre." Droz. II, 467.

"Il marchait au milieu d'une révolution en examinant toujours quel parti il en pourrait tirer pour son ambition ou pour sa fortune; il n'aimait pas les crîmes gratuits." Lacretelle I, 163.

[2] "Soutenir la royauté sans abandonner la révolution, s'opposer à toute usurpation de quelque côté qu'elle vienne, et ne sacrifier la liberté ni à ses goûts, ni à sa raison, est un effort de génie dont peu d'hommes sont capables, et il faut admirer Mirabeau pour avoir pris et sontenu ce rôle avec autant de fermeté." Raynald, 255.

[3] Writing to Mauvillon on the 16th of June 1789, Mirabeau referred as follows to the idea so current in regard to himself: "On a pensé m'ecarteler, et fait circuler que j'étois l'homme du gouvernement. En vérité je me vends à tant de gens, que je ne comprends pas, comment je n'ai pas encore acquis la monarchie universelle."

"Le léger service que je venais de lui rendre me donnait quelque droit d'entrer avec lui dans les détails sur sa position pècuniare, et j'acquis ainsi la certitude que cet homme, que tout le monde avait représenté comme venal, n'avait jamais sacrifié aucun principe pour l'argent." De la Marck I, 102.

August night,[1] has already been stated; why he should, notwithstanding, demand the proclamation of the decrees is sufficiently explained by the sentence, "The people enjoy these decrees already in anticipation, and were they contested to-day, the discontent almost universal, would be increased." Mirabeau was a statesman and he alone can be a statesman who recognizes the truth of the words, "Il ne suffit pas d'etre grand homme, il faut venir à propos."

IV. FORMATION OF A NEW GOVERNMENT.

A. RIGHTS OF MAN.

The committee that had been appointed to present a plan for a constitution, reported on the 9th day of July. Mounier, who spoke in the name of his colleagues, read a list of topics to be considered by the Assembly; the first of all was entitled, "A Declaration of the Rights of Man."[2] After a long debate, the plan was adopted. Lafayette, overflowing with enthusiasm for ideal liberty,[3] and ready in season and out of season to prove his devotion to it, hastened to champion the wishes of the people, as expressed in the cahiers and voiced by the committee, and presented on the 11th of July, a sketch of a declaration of rights.[4] It was not discussed at that time, but on the 14th

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[1] "Au lieu d'une renonciation bien moins solemnelle qu'un décret, j'aurais voulu que toutes les questions de priviléges et de fiefs, de propriétés acquises à titre onéreux, eussent été discutées, on aurait moins détruit, mais on aurait excité moins de prévention: chaque parti aurait regagné par la conciliation des esprits qu'il aurait perdue par des sacrifices; on aurait du moins évité le danger d'ecraser sous un monceau de ruines l'edifice naissant de la liberté." Mirabeau à son oncle, du 25 Oct. 1789. Lucas-Montigny VI, 176.

[2] This had been called for by a large part of the cahiers. See p. 34.

[3] "La Fayette était né avec l'amour de la liberté, comme d'autres naissent avec l'amour des arts." Droz. II, 294.

[4] "Longtemps après, on a demandé à La Fayette comment il n'avait pas craint les effets que cette déclaration produirait sur la multitude: il a répondu qu'un péril imminent menaçait l'etat, que l'assemblée pouvait être dissoute et

of July, when a new committee was appointed, Lafayette's plan was referred to it. On the 27th of July, this committee made a double report; the Bishop of Bordeaux read a sketch of the first two chapters of the constitution; the first, treating the declaration of rights, the second, the principles of the French government. Clermont Tonnerre gave an analysis of the cahiers. While all of them agreed in the desire of a regeneration of the state, they were not united upon the way in which this was to be accomplished; one part wished the reform of abuses, the other demanded a new constitution; and the only difference between the cahiers desiring reform and those calling for a new government, lay in the demand of the latter that the first chapter of the constitution contain a declaration of the rights of man.

This naturally raised the question, "Shall the constitution be preceded by a declaration of rights?" It was discussed in the sessions of the 1st, 3rd, and 4th of August, and on the latter day, the Assembly voted almost unanimously in the affirmative.

Besides the declarations proposed by Lafayette and the committee, many others had been presented and to escape the chaos into which it seemed about to fall, the Assembly adopted, on the 12th of August, the proposal of Desmeuniers that a committee be appointed to examine the various projects and to report upon them. This committee was named on the following day, and Mirabeau was one of the members. It seemed like the mockery of fate that the first opportunity given him to take the initiative, should be upon a question that his practical sense would not allow him to support.[1] Up to this time, he

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la nation librée au despotisme, qu'alors il avait voulu planter un drapeau sous lequel viendraient, dans d'autres temps, se rallier les Francais." Droz. II, 293.

"La Fayette avait présenté le sien dés le 11 juillet à l'Assemblée Nationale, mais on peut dire qu'il avait été lui même devancé par le parlement de Paris." Lucas-Montigny, VI, 197.

[1] "Une déclaration nue des droits de l'homme, applicable à tous les âges, à tous les peuples, à tous les latitudes morales et géographiques du globe, était sans doute une grande et belle idée; mais il semble qu' avant de penser si généreusement au code des autres nations, il eût été bon que les bases du nôtre fussent, si non posées, du moins convennis." Courrier de Provence. No. XXI, 1, (22 and 23 août).

had taken no part in the debate, but favored an adjournment of the declaration and expressed his opinion to that effect in the Courrier de Provence.[1]

On the 17th of August, Mirabeau read a project that had received the approval of the committee.[2] In the speech[3] that preceded the reading, he pointed out clearly the difficulty of framing a declaration of this nature and the danger of publishing it in advance of the constitution.[4] The project found but little favor, and the debate, beginning anew on the same day, continued until the 19th of August. Rabaud de Saint-Etienne attacked the project on the 18th, declaring that it lacked order and that he desired "such clearness, truth and simplicity in the principles and conclusions that everybody could grasp and understand them."[5] To this Mirabeau replied: "The committee of five reflected too long upon the declarations of rights, that served as a basis of their work, not to be convinced how much easier it is to criticise them than to make a good one; and the late debates upon this matter, as well as those that have occupied this session, ought to leave no doubt on this point."[6] Later in the day, he made an effort to secure the postponement of the discussion and to prevent the appearance of the declaration before the completion of the constitution.[7] "I propose as an individual, and not as a member of the commit-

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[1] "Il est donc absolument nécessaire qu' une déclaration des droits ne soit point jetée en avant de la constitution dont elle est la base, afin que les principes de la liberté, accompagnés des lois qui en dirigent l'exercise, soient un bienfait pour le peuple, et non pas un piége, et non pas un tourment." Courrier de Provence, No. XXVIII, 2 (17 au 18 août.)

[2] "Dumont, Clavière, Du Roveray waren seine Gehilfen bei dieser Arbiet gewesen, die vom Comiteé der Fünf genehmigt worden war." Stern, II, 56.

[3] Arch. parl. VIII, 438.

[4] In a note to his printed speech of August 19, Mirabeau wrote: "Car je persiste à croire une déclaration des droits impossible à rédiger aujourd'hui si l'on veut qu'elle ne soit ni dangereuse, ni insignifiante, et l'on travaille très-péniblement et tres-longuement à prouver, par le fait, que j'ai raison." Méjan II, 38.

[5] Arch. parl. VIII, 453.

[6] Arch. parl. VIII, 453.

[7] Arch. parl. VIII. 454.

tee of five, to decree anew that the declaration of rights ought to be an integral and inseparable part of the constitution and form the first chapter of it. I propose further—and the long embarassment of the Assembly proves to me that I am right in proposing it—that the definite composition of the declaration of rights be postponed to the time when the other parts of the constitution shall themselves be fully known and fixed." This proposition served only to arouse the distrust of many deputies and called forth the charge that he was trifling with the Assembly in thus urging it to revoke decrees already made.[1]

At length, wearied by the long debate, the Assembly voted on the 19th of August, to choose one of the many projects and to discuss it article by article. The one selected was that presented by the sixth bureau; the discussion began upon the 20th of August. Only two articles of the original project were left intact and the circumstances under which the first of these was adopted are so characteristic of the temper of the Assembly, that they deserve to be recounted. The first nineteen articles had been rejected and substitutes offered. The twentieth was reached; a great many new readings had been presented, differing in form but not in substance from the original article. Just at this point, M. M. Modier and de Lally remarked that the only fault with the article was that it had been composed by the sixth bureau. This unexpected witticism revolutionized opinion and the article was unanimously adopted.

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[1] In Mirabeau's reply occurs this justly famous passage: "Sans doute, au milieu d'une jeunesse très-orageuse, par la faute des autres, et sur-tout par la mienne, j'ai eu de grands torts, et peu d'hommes ont, dans leur vie privée, donné plus que moi, prétexte à la calomnie, pâture à la médisance: mais j'ose vous en attester tous: nul écrivain, nul homme public n' a plus que moi le droit de s'honorer de sentiment courageux, de vues desintéressées, d'une fière indépendance, d'une uniformité de principes inflexibles. Ma prétendue supériorité dans l'art de vrais guider vers des buts contraires, est donc une injure vide de sens, un trait lancé du bas en haut, que trente volumes repoussent assez pour que je dédaigne de m'en occuper." Arch. parl. VIII, 454.

"Die Stelle 'Sans doute, au milieu d'une jeunesse très-orageuse' etc., schon in der Schrift, Réponse du comte de Mirabeau à l'Ecrivain des Administrateurs de la compagnie des Eaux de Paris (s. o. Band I, S. 190) S. 101." Stern II, 57, note 1.

During these discussions that lasted until the 26th of August, Mirabeau spoke five times: twice upon the responsibility of all agents of the executive power, twice upon religious tolerance and once upon the freedom of the press.

Article VII of the project adopted by the Assembly declared that, "those who solicit, expedite, execute or have executed arbitrary orders, ought to be punished." To this, it was objected, that subordinates in the executive department ought not to be held responsible for orders received from their superiors and that, moreover, responsibility, being an object of detail, ought not to enter into a declaration of rights. Upon this topic, Mirabeau could speak out of a full experience, for he had suffered much from the execution of arbitrary orders by irresponsible subordinates.[1] "Responsibility," he exclaimed, "would be an illusion if it did not extend itself from the first minister to the last sbire.[2] That does not suppose that the subaltern should judge the order of which he is a bearer, but he may at the same time and he ought to judge of the form of the order. * * * In a word, the public force should be submitted to forms determined by law, and there is no other kind of inconvenience in that, but the necessity of having from now on, laws clear and precise, and that is one argument more in favor of the dogma of responsibility."[3] And the responsibility was decreed.

The same day there was an exciting discussion upon articles 16, 17 and 18, touching religious liberty. The language in which Mirabeau expressed himself could not be misunderstood.[4] "I am not about to preach tolerance," he began.

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[1]It was against the arbitrary acts of the French government that his work: "Des lettres de cachet" (1782) was directed. In the preface, he wrote: "Mais qui pourroit, sans un chagrin amer, entendre des citoyens, d'ailleurs honnêtes & incapables d'encenser le despotisme, adapter légérement des maxims destructives de toute liberté & se laisser persuader par des exemples particuliers que la violation des regles & des loix est utile ou même nècessaire? Quelle ressource nous reste-t-il, si l'opinion publique invoque l'arbitraire?" Preface p. VII.

[2]"Sbire" from the Italian *sbirro*=bailiff. Arch. parl. VII, 471.

[3]Arch. parl. VIII, 472.

[4]Arch. parl. VIII, 473.

"The most unlimited religious liberty is, in my eyes, a right so sacred, that the word tolerance, intended to express it, appears to me in a certain way tyrannical, since the existence of a power that tolerates, attaints the freedom of thought by the very fact that it tolerates and may also be able not to tolerate."

The Assembly was not treating this question of worship from the true standpoint. "Men did not bring worship into society, it was born only in the community. It is then an institution purely social and conventional. It is a duty, but this duty gives birth to a right, namely: that no man may be disturbed in his worship. This is the only article it is necessary to insert in the declaration of rights on this subject." The next day, articles 16 and 17 were postponed and the discussion continued on article 18 that read: "Every citizen that does not trouble the established worship, ought not to be disturbed." Again Mirabeau spoke "submitting some reflections to show that worship is a duty and not a right, and that the only thing that pertained to the declaration was to boldly pronounce religious liberty." Some say that worship is an object of exterior police. Do they speak as catholics or as legislators? In either case their position is untenable, for if worship is an object of regulation it is civil, fallable and not divine; no catholic would concede that. On the other hand, worship consists of prayers, hymns, and discourses and no legislator would think of submitting these things to the inspection of the police. Again, they speak of the dominant worship. That word should be banished from the legislation. "Nothing should dominate but justice."[1] But his eloquent pleading availed nothing; the Assembly decreed thst "no one ought to be disturbed for his opinions, even religious, provided that their manifestation does not disturb the public order established by law." Upon this decree, Mirabeau expressed himself in the Courrier de Provence as follows: "We ought not to dissimulate our grief that the National Assembly, instead of destroying the germ of intolerance, has placed it in reserve in a declaration of the rights of man."[2]

[1]Arch. parl. VIII, 476.

[2]Courrier de Provence, XXXI, 44 (22 and 23 août).

The discussion upon the liberty of the press took place on the 24th of August; it was article 19 of the project and read: "The free communication of thought, being the right of a citizen, ought to be restricted only in so far as it is injurious to others."

Mirabeau, who often assumed the role of critic in the Assembly, at once submitted this article to searching analysis. He drew the line sharply between *restriction* and *repression*; the latter punishes the crime when committed, the former attempts to anticipate its commission. "It is the crime only that one may punish, and the liberty of men ought not to be fettered under the pretext that they wish to commit crimes."[1] He requested that the word "repress" be substituted for "restrict." The article was rejected and one corresponding to Mirabeau's idea was adopted.

On the 26th of August, the work upon the declaration of rights was ended. As completed, it consisted of seventeen articles with a preamble: the latter was adopted entire from the project presented by Mirabeau, August 17th.

B. THE NEW CONSTITUTION.

Reference has already been made to the report of Mounier on the 7th of July. Before reading the plan of work prepared by the committee, he referred briefly to the significance and the importance of the task upon which the Assembly was engaged. Up to that time, France had possessed no constitution. Certain maxims, such as the exclusion of women from the throne, and the idea that the nation could not be taxed without its own consent, had always been recognized, but one could give the name of government neither to the Assemblies of the March and Mayfields of the first and second races, nor to the feudal aristocracy, nor to the government that had prevailed since 1614. He then read the report of the committee enumerating the chapters of the constitution in their order; they were as follows:

Declaration of the Rights of Man.

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[1] Arch. parl. VIII, 483.

Principles of the Monarchy.
Rights of the Nation.
Rights of the King.
Rights of the Citizen under the French Government.
Organization and Functions of the National Assembly.
Forms Necessary for the Establishment of Laws.
Organizations and Functions of the Assemblies, Provincial and Municipal.
Principles, Obligations and Limits of Judicial Power.
Functions and Duties of the Military Power.[1]

This arrangement was adopted, and on the 14th of July, a new committee of eight was appointed. The report of this committee made on the 27th of July by the Bishop of Bordeaux and Clermont Tonnerre, has already been considered. The debates upon the 4th of August decrees and upon the declaration of rights, caused the work upon the constitution proper to be delayed until the 29th of August.

On this day, Mounier, reporting in the name of the committee, read six articles under the title, "The principles of the French government." The first of these began with the words, "The French government is a monarchial government." This expression raised a storm of disapproval and new readings were showered in from every side; of the some forty received, none was more remarkable than that of the Baron von Wimpfen, "The French government is a royal democracy." The confusion was extreme, and without reaching any conclusion, the Assembly adjourned. The following day, as the discussion upon article one was about to open anew, Viscomte de Noailles proposed, that previous to the debate upon any other questions, the following points should be settled :[2]

1. To decide what one understands by the royal sanction.
2. If it is necessary for legislative acts.
3. In what case and what manner it ought to be employed.

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[1]Arch. parl. VIII, 217.

[2]The last two questions are given as formulated by Méjan : the Archives (VIII, 509) enumerate the first three and add : "Je propose encore de joindre à ces questions celle de la permanence des États, de l'organization de l'Assemblée en une ou deux chambres."

4. Shall the National Assembly be permanent?
5. Shall it be composed of two chambers or of one only?

During the whole of the 29th of August, this proposal was discussed and finally adopted. Owing to other business, the debates upon the questions themselves did not begin until the 1st of September.

I. ROYAL POWER.

a. Veto.

The discussion upon the royal veto began upon the 1st of September. It was one of the few great debates that rose like mountain peaks out of "the deluge of commonplace." It was a debate conducted in the midst of great public excitement and this excitement made itself felt in the Assembly.[1] At this time too the political ignorance of the masses of the capital was made only too clear; an ignorance at once ludicrous and frightful, bearing, as it did in its bosom, the germs of the reign of terror.[2]

For the question under consideration there were three possible solutions and there were three parties in the Assembly; the advocates of the absolute veto, as it was called, of the suspensive veto, and of no veto. The cahiers were unanimously in favor of the first, but since the formulation of these demands,

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[1] "Dans la séance de la veille (31 août) l'assemblée avait reçu, et ne s'en était point occupée différentes lettres anonymes et signées: dans lesquelles un grand nombre d'hommes si disoient disposés à punir la cabale qui voudroit donner au roi un veto quelconque." Méjan II, 88.

[2] "Plus ce mot veto était intelligible pour le peuple, plus il était facile de lui en donner une idée terrible. On parvint à la faire redouter comme un personnage dangereux. Un homme demanda de quel district il était; un autre opina pour qu'on mît à la laterne." Toulongeon I, p. 68 (Quoted by Lucas-Montigny).

"A gentleman here tells us an anecdote which shows how well this nation is adapted to the enjoyment of freedom. He walked near a knot of people collected together where an orator was haranguing. The substance of his oration was: "Messieurs, nous mauquons du pain, et voici la raison. Il n'y a que trois jours que le Roi a eu ce veto suspensif, et déjà les aristocrats ont acheté des suspensions et et envoyé les grains hors du Royaume. To this sensible and profound discourse his audience gave a hearty consent. 'Ma foi, il a raison, ce n'est que ça.'" Morris I, 173.

public opinion—at least the public opinion that influenced the Assembly—had made tremendous strides in advance and the majority of the delegates favored the suspensive veto.

Mirabeau's position on the latter subject was a peculiar one; while favoring an unlimited veto, he was looked upon outside of the Assembly as an advocate of the suspensive veto or even as the opponent of the veto in any form. He had already many times declared himself in favor of the veto. On the 15th of June, in his first speech, he said :[1] "Can the authority of the monarch slumber for an instant? Is it not necessary that he should concur in your decrees?" And in his second speech on the evening of the same day, he spoke in a manner that should have left no uncertainty in the minds of his hearers: "And I, gentlemen, believe the veto of the king so necessary, that I had rather live at Constantinople than in France, if he did not have it."[2] Again in his speech upon the "right of chase," he referred to the veto in these words :[3] "When it shall be a question of the royal prerogative, that is to say, as I will demonstrate in its time, of the most precious domain of the people, one will judge whether I know the extent of it. Ah! I defy in advance, the most royalist of my colleagues, to carry farther the religious respect for it."[4] This would seem to leave no doubt as to his opinion on the question, and yet there was "general astonishment," when, in the debate, he supported the absolute veto.[5] How great this astonishment was, it is difficult to tell, but the astonishment of the modern reader is even greater, when, after a perusal of Mirabeau's speech on the veto, he reads that, "the conclusions were so involved that the pub-

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[1]Arch parl. VIII, 110.

[2]Arch. parl. VIII, 118.

[3]Arch. parl. VIII, 359.

[4]This passage is from Lucas-Montigny, (VI, 183): the Archives have "respectable" in place of "royaliste."

[5]"L'abbé Maury défendit avec force et talent le véto absolu, et, à l'etonnément général, trouva un second dans le comte de Mirabeau." Lacretelle, l'assemblée constituante I, 163.

lic could believe that he combatted the veto."[1] It was on the first day of the debate that Mirabeau spoke as follows:[2] "In the best organized monarchy, the royal authority is always the object of the fears of the citizens: that one whom the law places above all, may easily become a rival to the law. Sufficiently powerful to protect the constitution, he is often tempted to destroy it; yet, if one considers with candor the principles and nature of a monarchial government instituted upon the base of the sovereignty of the people, if one examines attentively the circumstances that gave place to its formation, one will see that the monarch ought rather to be looked upon as the protector of the people than as the enemy to its happiness. Two powers are necessary to the existence and to the functions of a body politic: that of willing and that of acting. * * In a great nation, these two powers cannot be exercised by itself: hence the necessity of the representatives of the people for the exercise of the faculty of willing or of the legislative power, hence also the need of another kind of representatives for the exercise of the faculty of acting or the executive power. The more considerable the nation is, the more important that this last power should be active; hence the necessity of a unique and supreme chief. * * * Both of these powers are equally necessary, equally dear to the nation.

"The executive power, acting continually upon the people, is in a most intimate relation to it, and it is of importance that this power have in its hands a sure means of maintaining itself. This means exists in the right attributed to the supreme chief

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[1] "Voici quelques extraits du discours de Mirabeau dont les conclusions furent assez enveloppées pour que le public pût croire qu'il combattait le veto." Buchez II, 411.

"On put voir combien les hommes exaltés craignaient de s'aliéner Mirabeau. Les journalistes opposés au veto n'oisaient annoncer qu'il avait combattu leur opinion. Gorsas, dans son Courrier de Versailles, dit qu'on ne sait s'il parlé sur ou contre ou pour le veto. La chronique de Paris suppose qu'il a proposé un veto suspensif, parce qu'il avait dit, avec raison, qu' à proprement parler il n'y a pas de veto illimité. Camille Desmoulins disait que les ennemies de Mirabeau répandoient le bruit qu' il soutenait le veto; mais que c'était une calomnie." Droz. II, 452. See Stern II, 64–68.

[2] Arch. parl. VIII, 537.

of a nation to examine the acts of the legislative body and of giving or refusing to them the sacred character of a law. Suppose that the prince had used this veto * * * the Assembly would have divers means of influencing the will of the king; it could refuse the impost, it could refuse the army, it could refuse both, or simply veto them for a short time. The prince, menaced by a paralysis of his powers for a known period, has no other means than an appeal to the people, a dissolution of the Assembly. If then, the people send back the same deputies to the Assembly, is it not necessary that the prince obey? For that is final[1]; whatever idea one has given him up to then, of his pretended sovereignty, then he ceases to be one in opinion with his people and what his people has declared." This brief extract from a long and careful argument, in which the points, merely touched upon above, were fully developed, could have left no doubt in the minds of the intelligent members of the Assembly in regard to Mirabeau's position. In his closing words, he summed up the substance of his speech, by declaring in favor of a "royal sanction without written restrictions, but perfectly limited in fact."

The discussion upon the veto was continued through the sessions of the 1st, 2nd, and 3rd of September, and on the 4th, 5th, and 7th, the questions of the permanence of the Assembly and its organization were debated. It was Mirabeau's intention to speak again,[2] but the action of the government prevented him from doing so[3] and on the seventh, the debate was closed.

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[1] "Car c'est là le vraï mot."

[2] "Mirabeau, qui avait sur cette question un travail tout prêt, qu'un M. Reibasc (Reybaz?) avait rédigé sous sa direction, ne prit pas la parole quand il vit le ministre abandonner le principe monarchique. Il prévit qu'il serait battu, s'il se mettait seul en avant, et préféra ne point s'exposer à une défaite." De la Marck I, 100.

[3] "Necker recommandait une circonspection extrême à l'égard du veto, et disait si l'on n'était pas certain d'une grande majorité en faveur du veto absolu, la prudence exigeait qu'on ne s'obstinât point à le soutenir. Il fit plus: il lut au conseil un rapport dans lequel il développait l'opinion que le veto suspensive offrait autant d'avantages et moins d' inconvenients que le veto illimité: et il obtint facilement de Louis XVI l'autorization de communiquer ce rapport à l'Assemblée nationale." Droz. II, 460.

At the opening of the following session, the president read to the Assembly a long list of subjects to be voted upon. This produced a stormy discussion, many shorter and less complicated lists being presented; one of them by Mirabeau. In his analysis of the questions, he spoke of the veto as follows: "If one demands of me, 'Do you wish an absolute veto? or a suspensive veto?' I respond, it is necessary first, to ask me, if I wish a veto; since the absolute veto is not a thing of reason."[1] He then proposed an order of deliberation, but from all the arrangements presented, the Assembly chose that of Camus; it consisted of four questions, the third and fourth upon the veto:

3. Shall there be a royal sanction or not?
4. Shall it be suspensive, or pure and simple?

It was not until the 11th of September, that the Assembly reached the third question and as it was about to be put to vote, the president announced that he had received a letter from the minister of finance requesting him to lay before the Assembly a report made to the royal council on the subject of the veto. Mirabeau opposed the reading and from one sentence in his remarks it appears very probable that he knew the contents of the letter: "Suppose," said he, "that in this report the king should refuse the veto, one ought none the less to attach this prerogative to the royal power, if the Assembly consider that the right of suspending the acts of the legislative body is useful to the liberty of the nation."[2] The letter was not read, but it had its effect, for in the same session the suspensive veto was decreed by an overwhelming majority, and on the 21st of the same month, the duration of the veto was limited to two legislatures.

b. Inviolability and Heredity.

In his speech upon the veto, Mirabeau had dwelt upon the necessity of declaring the person of the king inviolable and sacred, "without which the throne will never be secure against ambitious men." On the 15th of September, a member of the nobility, appropriating this idea, proposed that the Assembly

[1]Arch. parl. VIII, 603.

[2]Arch. parl. VIII, 609.

decree the heredity of the throne and the inviolability of the person of the king. The proposition was received with great favor, and after some discussion took the following form :

1. The person of the king is inviolable and sacred.

2. The throne is indivisible.

3. The crown is hereditary from male to male in the order of primogeniture, to the absolute exclusion of females and their descendants.

The last article gave rise to a debate on the subject of the Spanish succession ; it filled three sessions. M. Arvoux moved that the reigning branch of Spain that had renounced its claim upon the throne in the treaty of Utrecht, should be excluded from the succession. Many members favored the postponement of the consideration of this question, on the ground that it was "delicate, dangerous and impolitic." Mirabeau also favored postponement.[1] "Without doubt," he said, "it will be necessary to occupy ourselves some day with this question, if it were only to substitute for this, too long consecrated expression of *family compact*, that of *national compact*. But our affairs do not permit us to occupy ourselves with our foreign relations." The adjournment was rejected, however, and the debate began. "From his knowledge of the geography of the Assembly," Mirabeau pretended to see in the Spanish question an Austrian intrigue and proposed that the decree under discussion be amended by the addition of the clause, "no one shall exercise the regency but a man born in France."[2] Whether there was more in the question than appeared on the surface, or whether Mirabeau had conjured up an evil spirit in order to exorcise it, it is impossible to say. Later in the day, Mirabeau moved that the part of the decree that was uncontested, be voted at once, and that the rest be sent away for examination.[3] This idea found no favor and the discussion went on.

M. de Mortemar gave a new turn to the debate by affirming that the renunciation of the Spanish branch was not con-

[1]Arch. parl. VIII, 642.

[2]Arch. parl. VIII, 643.

[3]Arch. parl. VIII, 643.

tained in the treaty of Utrecht; simply the declaration that the two crowns of France and Spain should not be united on the same head. Mirabeau called him to order, declaring the assertion profoundly false, an insult to public right and an injury to national dignity; it countenanced the idea that, "individuals may bequeath nations like vile herds."[1] M. de Sillery, however, confuted M. de Mortemar, by the production of the renunciation of the king of Spain and the letters patent of 1713. Again Mirabeau pressed for a division of the motion, but was opposed by M. d'Espremenil, and when he desired to respond, was unsuccessful in obtaining the floor.

The next day M. Target proposed to add to the decree the words: "Without intending to prejudge upon the effect of renunciations, upon which, if the case arises, a national convention shall pronounce." Mirabeau spoke most emphatically against the amendment.[2] Everything would seem to induce the Assembly to abstain from the consideration of this question, but since it had been taken up, it was important that it be judged "and it is not upon diplomatic documents, renunciations and treaties that you have to pronounce, it is according to national interest. * * * I defy anyone to deny to me that every nation has not the right to institute its government, choose its chiefs, and determine their succession." He was interrupted by many voices, but continued: "I declare that I am ready to treat the subject fundamentally, to show that if it is of interest to every nation that its chief conform to its morals, its habits, its local peculiarities, that he be without foreign possessions, foreign affections, that it is more true of the French than of any other people * * * the nation wishes only a French prince * * * Europe, and above all, Spain, has not said *there are no more Pyrenees;* and in leaving the question now undecided, if there is a question, one will spread innumerable germs of internal discord. If there is no question, the composition of this article should be attended to outside of the Assembly, for here it consumes too much time and would never attain a

[1] Arch. parl. VIII, 643.

[2] Arch. parl. IX, 3.

certain degree of perfection, were the twelve hundred representatives twelve hundred excellent writers." But the debate went on and the next day the article was voted with Target's amendment and with it the articles on inviolability and indivisibility.

c. Ministerial Responsibility.[1]

Mirabeau seemed to have been the only man in the Assembly who thoroughly understood the English system of ministerial responsibility and the relations that should exist between the ministers and the Assembly. As early as the 15th of July, he claimed for the Assembly the right of sending away the ministers and defended that view against Mounier, who asserted that the Assembly should have no influence, either upon the dismissal or upon the appointment of ministers. In his speech of the 1st of September,[2] Mirabeau had dwelt upon the necessity of always exercising the ministerial responsibility "with the most inflexible rigor," and on the 5th of October, he had declared "that the person of the king is inviolable, but all other individuals of the state, whoever they may be are equally responsible and subject before the law."[3]

On the 29th of September, he proposed that the ministers be taken from the Assembly and admitted to its sessions with deliberative voice; the proposal was rejected. Upon the 6th of November, in a debate on the state of the finances, Mirabeau moved that "the ministers of his majesty be invited to come and take a deliberative voice in the Assembly until the constitution has fixed the rules which shall be followed in respect to them:"[4] this was the third article of a series of three that he proposed. The first two were postponed and the third was debated upon this and the following day.

On the 8th of November, the discussion took an unexpected turn. It was believed, and with reason, that Mirabeau had

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[1] In chapter V, under the title of "Critique de la Constitution," Raynald treats the question of ministerial responsibility in an able manner.

[2] Arch. parl. VIII, 539.

[3] Arch. parl. IX, 345.

[4] Arch. parl. IX, 711.

in view the prospect of a ministerial position for himself.[1] Here was the explanation of the opposition experienced by Mirabeau's motion, an opposition led by such men as Lanjuinais and Blin. The former, affirming that the cahiers forbade him to express his opinion before ministers, moved that, "The representatives of the nation may not, during the legislature of which they are members, nor during the three following years, obtain from the executive power, any place, pension, advancement, favor etc."[2] M. Blin pretended that a minister might by his presence paralyze all the ideas of liberty and it was also of importance to liberty that no minister have a consulting voice in the Assembly. He amended the motion of M. Lanjuinais by proposing that, "No member of the Assembly may, from this time on, pass into the ministry during the whole duration of the session."[3]

Mirabeau, who had always recognized the extreme importance of a co-operation between the ministry and the Assembly, saw clearly that the acceptance of their motion would render such co-operation impossible and at a time when it was becoming every day more imperatively necessary.[4] He recognized also that it was a direct blow at himself and he parried it bold-

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[1]"Oui nous osons le dire hautement, le comte de Mirabeau brûle du desir de voir M. Necker précipité du poste brillant qu'il occupe & profiter de sa chûte pour le remplacer." Mirabeau dévoilé, 11.

"L'intention du comte de Mirabeau est, n'en doutons point, de parvenir au ministre. C'est à ce but que tendent tous ses écrits, tous ses discours & toutes ses actions." Ibid 10.

[2]Arch. parl. IX, 716.

[3]Arch. parl. IX, 716.

[4]"Cependant quand je dis : J'avanceroi ; ce n'est pas que je ne sois décidé a rester stationnaire comme je le suis aussi longtemps que l'assemblée sera corps administratif, au lieu d'achever sa besogne de corps constituant. C'est ainsi qu'elle se perd et qu'elle nous perd, et je ne vois aucun rémède que dans la formation d'un ministére bon et de bonne foi, laquelle formation est impossible aussi longtemps que l'on ne lévera l'insensé décret qui interdit aux membres de l'assemblée toute place d'administration." To Mauvillon, August 4, 1790.

"Mais l'assemblée acharnée à soutenir le décret absurde qui defend à tout membre de la législature de prendre une place d'administration, interdit par cela seul au Roi tout bon choix et tout unité entre le bras et la volonté." Ibid, October 19, 1790.

ly. "The question that one has proposed to us is a problem to be solved. We have only to make the unknown disappear and the problem is solved. I cannot believe that the author of the motion wished seriously to have it decided that the elite of the nation did not contain a good minister; that the confidence accorded by the nation to a citizen ought to be a title of exclusion from the confidence of the monarch; that the king, who in moments of difficulty, has come to demand counsel of the representatives of the great family, may not take counsel of such of these representatives as he may choose; that in declaring that all citizens have an equal aptitude for all employments, without any other distinction than that of virtue and of talents, it is necessary to except from this aptitude and this equality of rights, the twelve hundred deputies honored by the suffrages of a great people; that the National Assembly and the ministers ought to be so divided, so opposed to one another, that it is necessary to remove all means that may establish greater intimacy, more confidence, more unity in the plans and proceedings..

"No, gentlemen, I cannot believe that such is the object of the motion, for it would never be in my power to believe a thing so absurd. * * I believe, gentlemen, that it may perhaps be useful to prevent some member of the Assembly from entering the ministry. But as, in order to obtain this peculiar advantage, it is not fitting to sacrifice a grand principle, I propose, as an amendment, the exclusion from the ministry of those members of the Assembly, that the author of the motion appears to distrust, and I charge myself to make them known. There are in this Assembly, gentlemen, only two persons who may be the secret object of the motion. Who are these members? You have already divined it, gentlemen, it is either the author of the motion or myself.. Here is then, gentlemen, the amendment that I propose to you; it is to limit the exclusion demanded to M. de Mirabeau, deputy of the commons of Aix."[1] But the Assembly would neither show its hand nor renounce

[1] Arch. parl. IX, 716.

the satisfaction of excluding Mirabeau from the ministry; Lanjuinais' motion was postponed and Blin's adopted.[1]

d. Sanction and Promulgation of Laws.

Closely allied to the question of the veto, was that of the royal sanction for the acts of the legislative body. It was brought to the notice of the Assembly on the 22nd of September, by the following article: "No act of legislation can be considered as law, if it has not been made by the deputies of the nation and sanctioned by the king." This gave Mirabeau an opportunity to administer to the Assembly a well deserved rebuke in pointed language: "I demand what one understands by an act of legislation that is not a law. These two expressions are perfectly synonymous. I know of no other response to this observation than "to vote" and this seems to me unanswerable. But if one wishes to be understood, one will say: 'Are we in accord upon the thing we wish to define by the proposed article?' If it is the law, it is necessary to say simply, 'the law is the act of the legislative power sanctioned by the king.' If it is, as I believe, the nature and limits of the executive power that you wish to determine, it is necessary to change the composition from one end to the other under penalty of submitting ourselves to evident nonsense; or indeed, the article would read: 'An act of the legislative body shall be nothing else than an act of the legislative body.' I observe in ending, that it would not be a bad idea for the National Assembly of France to talk French and to write in French the laws that it proposes."[2] It was just such language as this that the Assembly needed; but it was not to its taste. The article as finally adopted read: "No act of the legislative body can be considered as law, if it has not been made by the Assembly of the representatives of the nation, legally and freely elected, and sanctioned by the king."

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[1]Morris wrote in his diary Nov. 7: "The event of Mirabeau's *propositions, levelled at the ministry,* has been a resolution that no member of the present States-General shall be admitted to a share in the administration." I, 219. It is quite possible that Morris used the word "levelled" here without intending to give to it the significance of "an hostile attack;" otherwise the whole purpose of Mirabeau's motion must have escaped him.

[2]Arch. parl. IX, 101.

In the debate upon the formula to be used in promulgating the law, Mirabeau met with more success. This question was discussed on the 8th of October. Robespierre had held up to ridicule the expressions: "By our certain knowledge," "by our full power and royal authority," "for such is our pleasure;" Pethion went farther and wished to proscribe the words, "By the Grace of God." "There is a very simple way," said Mirabeau, "to evade certain absurdities that have just been announced, and that is, that the law go forth from the Assembly fully edited. It is clear, then, that by a very simple formula, the law will conform very scrupulously to the decree. At present, I do not see that it is of any interest to nations to renounce ancient formulas, when they bear upon religious sentiments and can have no bad consequences. Without doubt these here, "certain knowledge," "full power," "such is our pleasure," have not been respected, and do not pretend to be to-day. They offend good sense; a "certain knowledge," which, without ceasing, varies, tests and contradicts itself; a "full power," that vascillates, retrogrades and can do nothing, pertain only to the *chancellerie* of despotism; but these words "By the Grace of God," are a homage to religion, and this homage is due from all people of the world; it is a religious form without any danger, and valuable to preserve as rallying point among men. What may we conclude from it, in the violences of the despotism the most imprudent, in the subtilties of the despotism the the most refined? If kings are kings, by the grace of God, nations are sovereign, by the grace of God. One may easily conciliate everything; in the first place, every preamble ought to be banished from the law. When one alone ordains, in his name, and according to his will, it is very natural that he seek to rally opinions; but the representatives of the nation, talk in the name of the nation and express the general will; it is sufficient that they expose in order to be obeyed. Here is the formula that I propose: "Louis, by the grace of God and by the constitutional law of the State, king of the French, conformably to the deliberation and to the wish of the National Assembly, we ordain that which follows."[1] This formula was adopted.

[1] Arch. parl. IX, 384.

A rapid retrospective glance over the topics treated in this chapter under "Royal Power," reveals all too clearly the fact, that although Mirabeau was untiring in his advocacy of monarchial principles, his propositions were almost without exception rejected by the Assembly. Distrusted by the king and queen, looked on with a jealous eye by Necker, unable to count upon the support of the moderate men in the Assembly, forced to play the part of a tribune to retain his popularity,[1] he could form no party, he was forced to fight the battle alone.[2] Compelled to follow when he should have led, he was condemned to a policy of opposition,[3] without the means at his disposal to make this opposition effective. The royal veto and the co-operation between ministry and Assembly were two of the foundation stones of his constitutional edifice, and yet in spite of all his efforts they were sacrificed to the all devouring spirit of Jacobinism and political ignorance.

II. LEGISLATIVE POWER.

Mirabeau's constitutional labors fall naturally into two classes: 1. His efforts to preserve whatever was serviceable in the old system, modifying it to adapt it to the demands of modern society, 2. His advocacy of new forms, where the old system was lacking. What he accomplished under the first head, has already been indicated; it is the purpose of this chapter to treat the second class of subjects. That he met with more success in proposing new forms of government and vital changes was

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[1] "A travers toutes ses déclamations et le mépris qu'il répandait sur les ministres, il se montrait monarchique et répétait que ce n'était pas sa faute si on le repoussait, et si on le forçait, pour sa sûreté personnelle, à se faire le chef du parti populaire." De la Marck. I, 92.

Mirabeau said one day to De la Marck: "Mais quelle position m'est donc possible de prendre? Le gouvernement me repousse, et je ne puis que me placer dans le parti de l'opposition, qui est revolutionnaire ou risquer de perdre ma popularité qui est ma force." De la Marck I, 99.

[2] Reynald, 346.

[3] "Read a motion of the Comte de Mirabeau in which he shows very truly the dreadful situation of credit in this country, but he is not so successful in applying a remedy as in disclosing the disease. This man will always be powerful in opposition, but never great in administration." Morris I, 220.

to be expected, for here he found himself supported by public opinion, and a public opinion that grew each day more radical. In the questions of the permanence of the Assembly, the number of chambers, imposts, and judgment of elections, he could speak as the tribune of the people, knowing that he had popular sympathy with him; but in the question of the right of war and peace, this popular support was lacking. Here the executive and legislative powers clashed; he was treading upon dangerous ground, for as has been seen, in all previous conflicts, the executive power had been obliged to succumb.

a. Permanence of Assembly and Number of Chambers.

Mirabeau favored the permanence of the Assembly and one Chamber. On the 1st of September, at the close of his speech on the veto, he said: "You see, gentlemen, I have constantly taken for granted the permanence of the national Assembly, and from that even I have drawn all my arguments in favor of the royal sanction which seems to me the unassailable rampart of political liberty, provided that the king may not employ his veto without dissolving, and may not dissolve without convoking another Assembly, because the constitution should never permit the social body to be without representation." He then made a strong plea in favor of annual Assemblies. He dwelt upon the vast amount of legislative work to be done and pointed to the English, "who have done everything, it is said, and nevertheless they assemble every year and find something to do; and the French, who have everything to do, ought not to assemble every year! * * * We shall have, then, a permanent Assembly, and this sublime institution would in itself be a sufficient counterpoise to the royal veto."[1] This speech contained nothing on the number of chambers and he would, doubtless, have handled that subject fully had he spoken a second

[1]Mirabeau's speech on the permanence of the Assembly was borrowed: "Mais il a paru sur le beau sujet de la sanction royale, un écrit de M. le Marquis de Cazaux, intitulé: "Simplicité de l'idée d'une constitution," qui est une mine inepuisable d'idées saines et profondes dont j'ai beaucoup profité; par example toute la partie de mon discours, relative à la permanence des Assemblées nationales, en est extraite." Méjan II, 89. Stern II, 65.

time, but, as has been already mentioned, circumstances prevented him from doing so. When, on the 9th of September, Mirabeau presented a list of subjects to be voted upon, he accompanied it by an analysis of the questions under consideration. "If one demands of me: 'Do you want permanence?' I cannot answer, if I do not know what one understands by annuality. 'Do you wish two chambers?' I respond, that I wish two chambers, if they are only two sections of a single one, and that I wish only one, if the one is to have a veto on the other."[1] According to Mirabeau, the questions first to be considered, were: "Shall the National Assembly be permanent; that is to say, shall it assemble every year;" "Shall the Assemblies renew themselves every two years?" According to the order of deliberation adopted by the Assembly, the first two questions read: 1. "Shall the Assembly be permanent or periodic?" 2. "Shall there be one or two chambers?"

After many new motions and extreme disorder, the permanence of the Assembly was voted. As soon as the second question was stated, Mirabeau exclaimed: "It seems to me that it is not in order to deliberate upon this question, because the Assembly in decreeing its permanence, has decreed its unity."[2] This utterance raised a storm of indignation. What induced Mirabeau to make such a move, it is difficult to say; perhaps he hoped to surprise the Assembly into voting its unity. He explained his action shortly after by declaring, "I had wished to say, in a laconic manner to the Assembly—that less than ever loves long speeches—that its unity existed essentially in its permanence."[3]

The following day, the 10th of September, there were long debates upon Mirabeau's motion and on the same day the two chamber system was rejected by a very large majority. The strain of the long debate had exhausted the Assembly and its action in adopting the one chamber system had disorganized the committee on the constitution, that had been strongly op-

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[1]Arch. parl. VIII, 603.
[2]Arch. parl. VIII, 604.
[3]Arch. parl. VIII, 604.

posed to it. The committee was not reorganized before the 15th of September, and up to that time, the Assembly worked without any definite plan, trusting largely to accident to supply it with subjects for discussion. On the 12th of September, it decreed that the duration of an Assembly should be two years, and on the 14th of September, that the whole legislative body should be renewed at each election.

b. Imposts.

On the 7th of October, the Assembly discussed the question of imposts. The article read: "Every contribution shall be supported by all citizens and all property without distinction;" it met with energetic opposition from Mirabeau. "Public contributions" he said, "cannot be supported equally by all citizens; for all citizens have not the same means, the same faculties, nor in consequence, the same obligation to contribute equally to the maintenance of the public cause. All that one may demand of them is that they contribute according as they are able. Further, there is a class of citizens, that deprived of the gift of fortune, having hardly the necessaries of life, ought, for that reason, to be entirely exempt."[1] This article was also contrary to the declaration of rights, for there it is declared "that the apportionment should be rigorously proportional, among all citizens, according to their abilities". There the proportion of fortunes was established as the basis of apportionment "in place of this equality which undeniably would be the most iniquitous and cruel inequality." In affirming that contributions ought to be borne equally by all goods, the Assembly attacked a principle already recognized by itself, namely, that the public debt ought not to be taxed. Those who have advanced money to the state in its time of need, have alone run all the charges of public defense and "may be considered as having paid in advance the same imposts that one would have them support to-day for a second time." After some further discussion, the article was adopted in the following form: "All contributions and public charges, of whatever nature they may be, are supportable proportionally

[1]Arch. parl. IX, 380.

by all citizens and proprietors, in proportion to their goods and abilities."

This article was followed by another upon the duration of the taxes imposed: "No impost shall be granted but for the time that shall elapse up to the last day of the following session; every contribution shall cease by right at this period, if it is not renewed." It was proposed to divide the imposts into two classes: permanent, for the payment of the public debt, and variable, for the payment of running expenses. The personal expenses of the king were to be reckoned among the first. Mirabeau spoke in support of these views. He referred to the successful test that they had stood in England, where "all the imposts necessary for the payment of the interest of the public debt are voted up to the extinction of the debt. One renews there from year to year, only those that serve for public expenses, such as the army and the navy. * * * The civil list is voted by parliament at the beginning of each reign; it is assured upon a fixed revenue, of which parliament may indeed change the apportionment, but which may not be diminished during the life of the king without his consent." After reverting to the danger of making the subsistence of the king dependent upon a yearly vote of the Assembly, Mirabeau exclaimed, "If the funds of the civil list are not fixed, the occupation[1] of a king is too dangerous." He proposed in place of the article under discussion, the following: "No impost shall be granted for more than a year, with the exception of those especially devoted to the civil list of the king and to the successive payment of interest and capital of the national debt. Every impost shall cease by right, at the expiration of the time for which it shall have been accorded, and every public official who shall demand it beyond this period, shall be guilty of high treason"[2] But many members favored the first form and a compromise was made, the article as finally adopted consisting of the one first proposed and the modifying sentence: "But each legislature may vote in the manner that appears to it the

[1] "le métier."

[2] Arch. parl. IX, 380.

most fitting, sums destined, be it for the acquitting of the public debt, be it for the payment of the civil list."

c. Judgment of Elections.

This little episode—for it was one of those unexpected debates that were constantly occurring in the Assembly—took place on the 10th of February, 1790. It was announced by M. Desmeuniers that the nomination of the mayor of Saint-Jean d'Angley had been contested by a large number of citizens of that city. He proposed that the matter be referred to the executive power, and that the Assembly pray the king, after a verification of the facts, to give orders for a new election. Many speakers were heard, pro and con, and there were cries of "aux voix!" "aux voix!" In the midst of these cries, Mirabeau began to speak, affirming that he was not going to be stirred up by unconstitutional cries of "to vote," "to vote," "send to the executive power."

"Gentlemen, the power of judging of elections can never pertain to the executive power, otherwise, it would judge of the elements of the legislative power. In the future, the elections can only be judged by the administrative Assemblies; but to-day, as we have not distributed all the powers, whatever may be the part that you may take, it is certain that the power to judge elections pertains to you and only to you. I do not see by what kind of pretext one can give color to a reference of the judgment of an election to the executive power."[1] M. Emmeri, accepting these principles, proposed that the municipality the nearest to Saint Jean-d'Angely, be instructed to make a record of the facts and send it to the Assembly, that the latter may be in a position to judge the case. But Mirabeau demanded adjournment, "that the committee on the constitution may prepare a law upon the important part of the judgment of elections." The Assembly, however, did not adjourn, but adopted the measure proposed by M. Emmeri, promising in its decree that it would "fix at once the constitutional rules for the judgment of elections."

[1] Arch. parl. XI, 541.

d. Right of Declaring War and Making Peace.

The most exciting debate that occurred during Mirabeau's connection with the Assembly was that upon the right of declaring war and making peace. Never was his superiority as an orator and debater more brilliantly displayed, and never did he win a more pronounced triumph over his opponents.[1] It was the most critical period in his political career, for he must rescue the last remnant of executive power and at the same time preserve his popularity. A break with the radical party was unavoidable[2] and although a victory under these circumstances added immeasureably to his reputation, it was also attended with great danger.[3]

Like so many of the subjects already considered, this important question also was brought to the notice of the Assembly in a most unexpected manner.[4] England and Spain had come into conflict on the coast of California; a Spanish squadron had seized a number of English vessels and England had equipped a large fleet for the purpose of retaliating. These preparations were not unknown in Paris, but it was not believed that a serious collision was to be feared; a letter of Montmorin to the Assembly, the 14th of May, revealed the gravity of the affair. France had equipped fourteen ships of the line, and although affirming that all efforts would be made to adjust

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[1]"L'autorité du roi ne pouvoit être rétablie que par la force armée; il fallait donc mettre cette force à sa disposition. L'opinion de Mirabeau sur le droit de paix et de guerre, qui est sans doute, de tous ses travaux législatifs, celui qui lui a fait le plus d'honneur, n'avait pas d'autre but." De la Marck, I, 171.

"La supériorité de Mirabeau, dans ce discours, réveille un souvenir de Démosthène accablant Eschine. Droz. III, 217.

[2]"Aussi les Lameth, Duport, Barnave et tous les republicans la combattirent. Leurs intrigues et leur rage provoquèrent dans la multitude des propos qui menaçaient la vie de Mirabeau." De la Marck I, 171.

[3]"La section du parti populaire, qui ne veut que le trouble, mattée par moi dans maintes occasions, domptée dans celle du droit de la paix et de la guerre, désespère de me voir abandonner les principes monarchiques, et en conséquence a juré ma perte." To Mauvillon, 4 août, 1790.

[4]Stern II, 151.

the differences amicably, the minister asked for a vote of supplies.

The Assembly at once decided that upon the following day all other business should be suspended and the king's message be taken into consideration. That night, the subject was discussed in the Jacobin club, and it was there affirmed that "the right of peace and war and that of foreign alliances pertains to the nation."

The discussion upon the 15th of May, turned at first upon the advisability of taking steps that might involve France in an expensive war. This part of the debate culminated in the utterance of the Abbe Maury, "I see in all this only a question of money."[1] But Alexander de Lameth saw much more in it and the discussion assumed a critical character when he declared: "No one certainly will find fault with the measures taken by the king. We may now deliberate since the orders are given; but this incidental question raises one of principle. It is necessary to know if the Assembly is competent, and if the sovereign nation ought to delegate to the king, the right of making peace or war. There is the question."[2]

The radicals, supported by popular sentiment, had thrown down the gauntlet. Many orators spoke for and against this view of the question; finally Mirabeau ascended the tribune. He declared this manner of eluding the question raised by the letter of the minister, "unreasonable, inconsistent, imprudent, and without object. I say that it is unreasonable and inconsistent, since the message of the king has no connection with a declaration of war; because the message of the king may exist when we may have decided that the right to make war and peace pertains to the nation. The right of arming, of placing itself suddenly in readiness, will always be the right of the supreme executive of the national will."[3] Here was Mirabeau's program and it was thus that he answered Lameth's challenge. "You cannot then," he continued, "avoid an examination of the king's message. The question resolves itself into knowing,

[1]Arch parl. XV, 516.
[2]Arch. parl. XV, 516.
[3]Arch. parl. XV, 517.

not if the king had the right to arm—which is not doubtful—but if the funds demanded are necessary, a thing not a bit more doubtful.'"[1] He concluded with the demand that the Assembly occupy itself with the message. When this proposal failed to find support, he moved that the Assembly approve the measures of the king and ordain by the same decree that on the morrow, it would begin the discussion of the constitutional question. This motion was finally adopted.

The debate began accordingly upon the next day, and lasted until the 22nd of May. The question under discussion read: "Ought the nation to delegate to the king the exercise of the right of peace and war?" Mirabeau delivered his first speech on the 20th. The question up to that time had been, "Does this right of making war and peace pertain to the king or to the nation, as represented by the legislative body?" In this form, Mirabeau declared the question insoluble and he proposed to resolve it into the following terms: "Is it not necessary to attribute the right of making war and peace concurrently to the two powers that our constitution has consecrated?" The substance of his project was as follows:[2]

The French nation should renounce all offensive wars; defensive wars must always begin with an attack from the side of the enemy. Meanwhile, the king must have the power to arm and resist these hostilities. Only when a state of war exists or is impending, is it necessary to consider the questions, "What are the duties of the executive power, what the rights of the legislative power?"

"The executive power ought to give notice without delay of the state of war either existing or impending, make known

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[1]Arch. parl. XV, 518.

[2]There exist two copies of this speech of May 20th 1790: the original is found in Nos. 141, and 142 of "Le Moniteur Universel," May 21st and 22nd, 1790; the other—or falsified copy—is found in the pamphlet printed by Mirabeau's order (See Bibliography) and in Méjan's edition of Mirabeau's works, vol. III, 297–346. The Archives, XVI, 618, reprint the speech from Barthe's edition of Mirabeau's works (1820); it is the falsified copy and the only comment made is, "Cette version diffère sur quelques points, de celle du Moniteur." The abstract given is based upon the speech printed in the Moniteur.

the causes of it, demand the necessary funds, require the union of the legislative Assembly, if it is not in session."

"The legislative body has, in its turn, four measures to take. The first is to examine, if, hostilities having commenced, the culpable aggression has not come from some agent of the executive power. In such case, the author of the aggression ought to be punished as guilty of high treason."

"The second measure is to disapprove the war if it is useless or unjust, require the king to make peace and force him to it by refusing funds."

"The third measure consists of a series of means ; the first of these, is not to take a vacation as long as the war lasts ; the second, to prolong the session in case a war is imminent ; the third, to unite to such an extent as may be found necessary, the national guard of the kingdom, in case that the king makes war in person ; the fourth, to require the executive power to make peace, whenever the legislative body may think proper."

But as the preparations for war should be entrusted to the executive power, so also the negociations for peace ; but treaties should be valid only when ratified by the legislative body. At the close of his speech, Mirabeau read ten articles embodying his views.

The following day, Barnave combatted Mirabeau's project. He declared that it was impossible that the power of declaring war be exercised by the king and by the representatives of the people. "The radical vice of M. de Mirabeau's project is that in reality it gives the king exclusively the right of making war. * * It is universally recognized that the king ought to provide for the defense of the frontiers and for the preservation of national property. It is recognized that without the wish of the king, differences may arise between individuals of this nation and individuals of foreign nations. M. de Mirabeau appeared to think that that began the war ; that in consequence, the commencement of the war being spontaneous, the right of declaring war could not pertain to the legislative body. * * Whatever resolution you may take, be it that you delegate this power to the legislative body, be it that you delegate it to the

executive power, the decree of M. de Mirabeau would always be imperfect, for it is indispensable to know the moment when the nation is at war ;[1] it is indispensable to know to whom it pertains, to declare it in its name, and in the two cases, he leaves us in uncertainty."[2]

Barnave's speech made a deep impression upon the Assembly ; many considered it unanswerable. As he closed, many voices demanded the question, but Mirabeau succeeded in obtaining a postponement of the decision, thus giving him an opportunity to speak the next day. The public excitement was extreme[3] and when Mirabeau ascended the tribune, he was conscious of the tremendous importance of the speech he was about to make.[4]

After a magnificent exordium, suggested by the striking contrast between his situation at that time, when "the grand treason of Count Mirabeau" was being cried in the streets, and

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[1]This was the critical point; not that, as Stern says (II, 157), "Er sagte nirgendswo mit klaren Worten, *wem* es zustehen sollte, das entscheidende Wort der Kriegserklärung zu spechen." He says distinctly in Article VI of his project; "La formule de déclaration de guerre et de traites de paix sera de la part du roi des Français et au nom de la nation." War, then, is to be proclaimed by the king ; but when? Before or after the notice has been given to the Assembly? Neither the speech nor the project contains any definite answer to this question. Many covert expressions, however, give color to the belief that the declaration was to be made by the king before presenting the matter to the Assembly.

[2]Arch. parl. XV, 641.

[3]"Le lendemain, l'effervesence continua de se manifester: Mirabeau était désigné aux fureurs populaires ; les colporteurs faisaient retentir le titre d'un pamphlet intitulé; Grande trahison de Mirabeau découverte ; et des gens apostés, en lisaient des passages au milieu de groupes nombreux. Vingt mille personnes se pressaient autour de l'assemblée couvroient les rues, les places, les jardins environnans ; et l'agitation de la foule était effroyante." Droz. III, 210–211.

[4]"Lors qu'il arriva à l'assemblée nationale, un ami qui venait de traverser la foule le prit à part, lui exprima de vives inquiétudes, mais sentit renaître son courage à ces mots prononcés d'un ton noble et ferme ; 'On m'emportera d'ici triomphant ou en lambeaux.'" Droz. III, 211. In regard to the truth of this much quoted expression, Lucas-Montigny says : "Nous ne croyous pas à ces paroles de la part d'un homme qui, le jour de la réplique, attendit froidement à la tribune, pendant trois quarts d'heure, et les bras croisés, que les rugissemens des deux oppositions, aristocratique et républicaine, lui permissent de prendre la parole." VIII, 260.

that of a few days before, when the people wished to bear him in triumph from the Assembly, he went on :[1] I re-enter the lists armed alone with my principles and with the firmness of my conscience. I am about to fix in my turn the true point of the difficulty with all the clearness of which I am capable, and I pray all of my opponents that do not understand me, to stop me in order that I may express myself more clearly, for I have decided to dispose of these reproaches, so oft repeated, of evasion, of subtilty and of ambiguity ; and if it depends upon me, this day will lay bare the secret of our respective loyalties."

Barnave had declared that the determination to make war—which is nothing else than the act of the general will—ought to devolve upon the representatives of the people. Mirabeau responded: "The organ of this will is at the same time the king and the Assembly. * * In your discourse, you attribute the annunciation of the general will—to whom? to the *legislative power ;* in your decree, to whom do you attribute it? to the *legislative body.* Upon that, I call you to order ; you have renounced the constitution. If you understand that the legislative body is the legislative power, by that alone, you will overthrow all the laws we have made. Would you accord to the king the initiative, or if you refused it, would you refuse likewise the veto?[2] Do you understand that if the king decides for war, the legislative body may deliberate upon peace? I do not find any inconvenience in that. Do you understand, on the contrary, that if the king alone wishes peace, the legislative body may declare war and oblige him to sustain it in spite of himself? I cannot adopt your system, for it gives birth to inconveniences that it is impossible to remedy.

"I said in my discourse that hostilities often anticipate all deliberation : I said that these hostilities may be such that a state of war has begun ; what have you responded? That there

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[1]Arch. parl. XV, 655.

[2]In his speech of the 20th, Mirabeau had said: "Le veto suspensif que vous avez accordé au Roi pourroit pas s'appliquer à de telles déliberations, les discussions dont je parle, n'en seront que plus redoutables." Here is a decided change of base!

is war only by a declaration of war. But do we dispute over things or words?''

Mirabeau concluded: ''I wish the concourse of the executive power in the expression of the general will in the making of peace and war, as the constitution has attributed it to the same in all parts of our social system already fixed.[1] My adversaries do not wish it. There is the line that separates us.[2] If I deceive myself, let my opponent stop me. Let him substitute in his decree, for the words the legislative body, these, the legislative power, that is to say an act emenating from the representatives of the people and sanctioned by the king, and we are perfectly in accord.''[3]

As soon as Mirabeau had finished, Charles Lameth demanded that Barnave be allowed to respond to him and was supported in his demand by Mirabeau himself and by Lafayette. But the Assembly adhered to its decision of the previous day, and declared the discussion closed. Twenty-two projects had been presented and an exciting contest arose over the question of priority; Chapellier demanded it for Mirabeau's project, Alexander Lameth, for Barnave's. In opposing the priority of Mirabeau's project, Charles Lameth declared that he would like better to adopt that of the Abbe Maury or of Cazales. * * ''It appears to me more dangerous for public liberty. It gives to the king the initiative of fact and allows the legislative power to play only a secondary role, while according to it the veto.''[4]

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[1]That applied to his position of the 22nd, but not to that of the 20th. His speech of the 20th, if it says anything, says that the king shall declare war without concourse of the Assembly.

[2]Here again he was right, *from his point of view;* his opponents did not wish to give the initiative and the veto to the king and Mirabeau did. On the 20th, however, Mirabeau wished to attribute to the king the right of declaring war; Barnave attributed this right to the Assembly. But Mirabeau would confess no change of front; he pretended that his views of the 22nd were the same as those of the 20th.

[3]These were sharp tactics, for Mirabeau knew that Barnave would never concede the veto to the king in this matter and thus by remaining silent, would leave the impression that the position of the 22nd was the same as that of the 20th.

[4]Arch. parl. XV, 659.

Also Barnave, in declaring himself against the priority of Mirabeau's project, found opportunity to criticise it at length. But it was all to no purpose : the Assembly voted to consider Mirabeau's project.

After the reading of the first article, Alexander Lameth moved to amend by substituting the following sentence : "War can be declared only by a decree of the legislative body, rendered on a formal proposition of the king." A confused discussion followed and finally the article was reduced to the following form : "The right of peace and war pertains to the nation. War can be decided only by a decree of the National Assembly, which shall be rendered upon a formal and necessary proposition of the king, and which shall be consented to by him." Mirabeau, who had quietly allowed things to take their course, here remarked : "One will have little difficulty in believing that I adhere with all my heart to this amendment for which I have combatted for five days.[1] If I had known before that it was only a contest of self love, the discussion would not have been so long. I demand that the word 'sanctioned,' the word of the constitution, be put in the place of 'consented'."[2] This was done and, with some minor changes, the decree was then adopted.

CONCLUSION.

From the material supplied in the preceding pages, it is possible to draw fairly exact conclusions as to Mirabeau's political views and as to the form of government he was desirous of erecting in the place of the old, absolute monarchy.

As the foundation stone of the new edifice, he demanded the recognition of the sovereignty of the nation and affirmed the right of this nation to "institute its government, choose its chiefs and determine their succession." But in this sovereign nation, he took account of the existence of privileged classes,

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[1]The person that compares the speech of the 20th with that of the 22nd, will have *much* "difficulty in believing it" ! In fact, he will not believe it at all.

[2]Arch. parl. XVI, 661.

and even while championing the claims of the insufficiently represented people, while insisting upon the necessity of deliberation in common, and voting by head, all thoughts of usurping the title, "National Assembly," were heaven-wide from his mind. At this first step toward violent destruction of the existing, he parted company with the revolutionary spirits.

He wished a constitutional monarchy in which the nation delegated its power to a king and to a legislative Assembly. This king should be "king by the grace of God," but over a nation that at the same time was "sovereign by the grace of God." The royal title should be hereditary, but the bearer must be a Frenchman, and, if need be, the Assembly should determine the royal succession. The king, in person inviolable, should be approachable through a responsible ministry, chosen from the Assembly, representing the predominant party in that body, and dismissable when its policy was rejected by the majority of the delegates. He should possess the right of veto and thus exert an indirect influence on legislation. In his hands, should rest the right to declare war and to make war, subjected only to certain checks from the legislative body. Further, as the king by his veto could prevent an act of the Assembly from becoming a law, so as a natural converse, every act of that body to become a law required the concurrence of the king and he alone was entrusted with the proclamation of it. At the beginning of each reign, a regular revenue should be set aside for the household expenses of the king and this sum should not be decreased during his life. In a word, while rendering the executive power responsible, "from the first minister to the last *shire*," Mirabeau did not render it impotent.

The will of the nation found representation in the legislative Assembly and here the will of the majority should rule. This body, representing proportionately the different classes of the nation, should consist of one chamber, vote by head, meet every year, and never be dissolved by the king unless a new Assembly were at once to succeed it. As has been said, the nation should have the right to institute its own government, and when the representatives of the nation, as a constituent As-

sembly, framed a constitution, at such a time, the veto of the king must be suspended. But the government once organized, the legislative power should consist of the legislative body and the king. The latter by the use of his veto, could appeal from the expressed will of the National Assembly to the presumed will of the nation. Against this veto, Mirabeau armed the Assembly with powerful weapons, the control of imposts and the control of the army; the employment of these arms would force the king to dissolve the Assembly and to appeal to the nation through a new election. Should this result unfavorably to himself, then he must yield. The same weapons that served the legislative body against the veto, must do service in the questions of peace and war; the king could declare war, he could begin it, but by the prosecution of ministers, by the refusal of funds and by the union of the national guards, the Assembly could force him to make peace. The imposts borne by all citizens in proportion to their property and abilities, could be voted by the Assembly alone, and but for a given period. Thus, through the control of the national income, the Assembly would act as a check upon the executive power. Finally, that the executive power might not exert an undue influence upon the legislative body, the judgment of elections should be entrusted to the latter.

To the existence of such a government, equality before the law, freedom of worship, and freedom of speech were indispensable principles, and Mirabeau did not forget to lay due weight upon them.

Here was his system and it can be affirmed with little fear of contradiction, that had it been adopted, it would have reformed France and prevented the revolution. Although he was unable to construct a government on these foundations, his work is none the less interesting and whoever makes a careful study of the man and his work will find himself repeating the words of Carlyle: "A questionable, most blamable man; yet to us, the far notablest of all."

VITA.

Fred Morrrow Fling, the son of Charles H. and Cynthia E. Fling, was born on the 4th of November, 1860, at Portland Me., U. S. A. In the fall of 1879, having passed through the schools of his native city, he became a student in the academical department of Bowdoin College, Brunswick, Me. He completed the four years' course in this institution, graduating in the summer of 1883. After graduating, and in the same year, he was appointed teacher of history and mathematics at Biddeford, Me. There he remained five years, devoting himself especially to the study of history. In the summer of 1888, he resigned his position for the purpose of pursuing his chosen work at a German University, and in July arrived in Leipzig: here he has remained up to the present time. During his connection with the University, he has listened to lectures by Professors Roscher, Maurenbrecher, Brentano, Arndt, Wuelker, Hasse, Pueckert and Wenck, and has been a member of Professor Maurenbrecher's Historical Seminar. To Professor Maurenbrecher, for his uniform kindness and sympathetic interest, he would express his heartiest thanks.

Leipzig, May 10, 1890.

MIRABEAU

AND

THE FRENCH CONSTITUTION.

FRED MORROW FLING.

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